FMA

Financial Management Act 2016

Procurement

Better Practice Guidelines

(Principles and Policies)

Department of Treasury and Finance

Tasmanian Government

Title: Procurement Better Practice Guidelines (Principles and Policies)

ISBN 978-1-922945-19-8 (Online)
ISBN 978-1-922945-20-4 (Hardcopy)

First published July 2019
This version published August 2024

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Introduction

The *Financial Management Act 2016* provides for the management of the public finances of Tasmania in an economical, efficient and effective manner consistent with contemporary accounting standards and financial practices.

Treasurer's Instructions are issued under section 51 of the Financial Management Act in respect of the principles, practices and procedures to be observed in the financial management of all agencies.

The *Better Practice Guidelines* are intended to assist Accountable Authorities and responsible officers with their financial management responsibilities in the area of procurement. The Guidelines should be read in conjunction with the Treasurer's Instructions.

This *Better Practice Guideline* provides information to assist in understanding Treasurer's Instructions PF-1 to PF-6, which set out the principles and policies that apply to the government procurement framework in Tasmania.

Further information, forms, templates, checklists and publications are available from www.purchasing.tas.gov.au (the Purchasing website) and www.tenders.tas.gov.au (the Tenders website). All queries in relation to the Treasurer's Instructions, this document and the website contents should be directed to purchasing@treasury.tas.gov.au (unless otherwise specified).

International Procurement Obligations

Tasmanian Government agencies are required to comply with procurement obligations set out in a number of international agreements. The *International Procurement Obligations* publication (available at www.purchasing.tas.gov.au), sets out the mandatory requirements that relate to procurement covered by the international agreements.

Please note that the *International Procurement Obligations* should be read in conjunction with the Treasurer's Instructions and *Better Practice Guidelines*, as they impose additional requirements agencies need to be aware of when undertaking covered procurement.

Procurement Principles

Treasurer's Instruction PF-1 *Procurement Framework - Procurement Principles* applies.

Value for money

Value for money means achieving the desired outcome at the best possible price by weighing up the benefits of the purchase against the cost of the purchase. It does not necessarily mean purchasing the cheapest product or at the lowest price.

When undertaking procurement, value for money factors should be considered at the beginning of a procurement and included in the specification and the evaluation criteria. The purpose of the specification is to communicate the buyer's requirements and to guide supplier responses.

Evaluation criteria are the standards that are used to assess how well an offer meets a buyer's requirements. They provide a mechanism for comparing offers by assessing the relative worth of different offers. The criteria should be weighted to reflect their relative importance, ensuring that the matters that are considered most important are given more weight in the evaluation process.

Examples of value for money factors are:

- contribution to the achievement of Government policy objectives (including policies aimed at supporting local and regional business, industry development and employment creation);
- fitness for purpose and quality;
- service and support;
- the advantages of buying from or engaging local and regional suppliers (for example, shorter delivery times, local backup and servicing, the availability of spare parts and the potential for creating strategic partnerships and cooperative product development);
- risk;
- climate change and environmental considerations including energy conservation; and
- whole-of-life costs, including end of use disposal value.

Open, impartial and effective competition

Open, impartial and effective competition in procurement encourages competitive offers and ensures that suppliers and the public can have confidence in the procurement. Agencies should:

- adequately test the market using an appropriate process based on value, type, the market and risk;
- use transparent and appropriate purchasing processes;
- avoid biased specifications; and
- treat all suppliers consistently and equitably.

Providing opportunities to local suppliers and adoption of the Buy Local Policy requirements

Agencies should:

- ensure procurements are planned taking into consideration the impact on local suppliers;
- actively seek bids from local businesses, particularly from those that have previously requested the opportunity to participate;
- ensure that requirements do not unnecessarily preclude local businesses from bidding or disadvantage local suppliers; and
- comply with the Buy Local Policy (refer page 9).

Observation of ethical procurement standards

Acting ethically and applying appropriate standards ensures that:

- procurement is undertaken consistent with public expectations and can withstand public scrutiny;
- taxpayer money is appropriately spent;
- suppliers are treated fairly; and
- there is accountability for decisions.

Elements that promote and demonstrate ethical behaviour and high standards include:

- Conducting business in the best interests of the State, avoiding situations that may impinge, or might be deemed to impinge, on impartiality.
- Ensuring that public sector probity requirements are met. This includes avoiding conflicts of interest and having agency processes in place to identify and deal with conflicts of interest. It is recommended that participants in procurement activities be required to declare conflicts and complete appropriate documentation where potential conflicts arise.
- Maximising value in all transactions and spending public monies efficiently, effectively and in accordance with relevant policies, for example the *Gifts, Benefits and Hospitality Policy*.
- Establishing and maintaining procedures to ensure that fair and equal treatment and consideration is given to all suppliers or interested parties.
- Ensuring communication with suppliers is prompt, courteous and honest.
- Minimising the cost to suppliers of participation in the procurement.
- Ensuring that the separation of roles and responsibilities between contractor and agency staff is maintained for the duration of the contract.
- Having agency processes in place to ensure that non-state servant participants in the procurement, for example, members of the evaluation committee or acting on behalf of the agency) meet the same standards as agency officers.
- Complying with *State Service Code of Conduct* requirements.

State Service Code: conflicts of interest and confidentiality

The *State Service Code of Conduct* (refer section 9 of the *State Service Act 2000)* establishes standards of behaviour and conduct that apply to all employees. Of particular relevance to

procurement activity are the requirements for employees to "disclose, and take reasonable steps to avoid, any conflict of interest in connection with the employee's State Service employment" and "maintain appropriate confidentiality about dealings of, and information acquired by, the employee in the course of that employee's State Service employment". Conflict of interest and confidentiality declaration templates are available on the Purchasing website.

Probity

Procurement activity should conform to the expected standards of probity. The process should have clear procedures and be consistent with the Government's principles, policies and guidelines. The legitimate interests of bidders should be established, understood and observed throughout the procurement.

The *Probity Guidelines for Procurement* and *Early Market Engagement Guidance* publications provide information on probity in procurement, including an outline of the essential principles to promote probity throughout the procurement process. The publications are available on the Purchasing website, in the Annexes to this publication.

Maintaining accurate records

The level of records required to be maintained should align with the risk, value and complexity of the procurement.

Records should include information on:

- the reason for the procurement;
- the procurement method chosen;
- submissions received including the time and date of receipt (where relevant) and where specific suppliers have been requested to submit a response, information on those that have declined;
- evaluation criteria, weightings and scoring (where relevant);
- decisions made and the reasoning behind the decisions; and
- exemptions or approvals obtained.

During the procurement, agencies should:

- document what questions were asked by suppliers and what information was provided;
- where possible, require questions from suppliers to be put in writing and respond in the same manner;
- ensure information provided to suppliers is limited to clarification of procedural issues or documentation; and
- ensure that any additional information provided to one prospective supplier is provided to all through the addenda process.

Records relating to procurement should be maintained in accordance with the *Archives Act 1983*. Other legislation which may impact on record keeping includes the *Evidence Act 2001*, the *Electronic Transactions Act 2000* and the *Libraries Act 1984*.

Procurement Policies

Buy Local Policy

Treasurer's Instruction PF-2 *Procurement Framework - Policies Impacting on Procurement: All Procurement* (clauses 2.5 - 2.17) applies.

The Government's policy is available in the *Buy Local Policy* publication, located on the Purchasing website. The sections below provide a brief overview of the Buy Local Policy's requirements. Additional information is available in the publication linked above.

Guidance for businesses in relation to the Buy Local Policy, including tips on being successful in procurement opportunities, can be found in the *Buy Local - A Guide for Tasmanian Businesses* document on the Purchasing website.

Disaggregation

The Buy Local Policy includes a requirement for all substantial procurement opportunities to be disaggregated. In certain circumstances, exemptions may be approved. Any current approved class exemptions from the requirement to disaggregate are listed on the Purchasing website.

Pre-procurement local impact assessment

The Buy Local Policy includes a requirement for a pre-procurement local impact assessment to be completed in certain circumstances. A non-mandatory template for formal assessments is available on the Purchasing website as an Annex to this document.

Where a formal assessment is not mandated, an informal assessment of the impact of the procurement on Tasmanian businesses, to ensure that those businesses are given every opportunity to participate and be successful, is recommended. The form and content of the informal assessment is at the discretion and direction of the Accountable Authority.

Approaching Tasmanian Businesses

Low value procurements

Treasurer's Instruction PP-2 provides that for procurements valued at less than $100 000, the Accountable Authority has discretion to determine an appropriate market approach method and may directly approach suppliers.

Agencies should consider approaching Tasmanian businesses first, where there is local capacity, capability and value for money in local offerings.

Competitive procurements

For competitive procurement processes valued at $100 000 or more, a minimum of two Tasmanian businesses should be approached where there is local capacity, capability and value for

money in local offerings. For clarity, this condition is considered met if a procurement opportunity is advertised publicly on the Tasmanian Government Tenders website. A procurement can proceed irrespective of whether any Tasmanian businesses respond to the market approach.

When a competitive selection process is undertaken from a panel contract (subsequent to a competitive procurement process to establish the panel) agencies should ensure Tasmanian businesses are given every opportunity to compete, in line with the intent of the Buy Local Policy.

Economic and Social Benefits

The Economic and Social Benefits criterion is used to assess the broader economic and/or social benefits of the procurement to the Tasmanian community and is weighted at 30 per cent of the total procurement evaluation (qualitative and quantitative criteria combined).

Applying the criteria to a procurement

For all competitive procurement processes, other than roads and bridges, an Economic and Social Benefits Statement template should be used to seek information from suppliers for the evaluation of this criterion.

The Economic and Social Benefits criterion contributes a significant weighting to the overall evaluation criteria and is designed to allow for flexibility in terms of how it applies to individual procurements. Sub-weightings can be applied to the individual components within this criterion (ie questions in the Statement) to better reflect the nature of the procurement.

There are five questions within the standard template available on the Purchasing website (in an Annex to this publication). An agency may choose to weight these equally in terms of their contribution to the overall 30 per cent (30%). Alternatively, the weightings can be adjusted to suit individual procurements.

Where it is intended that the questions within the Statement will be weighted individually, this information should be clearly identified within the relevant procurement documentation to allow potential suppliers to respond appropriately. The italicised guidance information within the template should be modified to reflect an Agency's broader economic and social priorities in relation to that procurement.

Agencies should assess suppliers against the criterion by rating the degree to which each supplier's response has satisfied the criterion (that is, not treated as 'met' or 'not met'). The criterion evaluates how the procurement opportunity will bring positive economic and social benefits to the Tasmanian community. Any business, regardless of size or location, is able to respond to the criterion by demonstrating how a contract awarded to it will benefit the Tasmanian community. It is also important to note that this criterion is not designed to allow suppliers to be given the full weighting of this criterion based solely on the fact that they are a Tasmanian business. To do so would risk a breach of international procurement obligations.

Submission of the ESB Statement by a supplier is voluntary. However, no score can be applied to the 30 per cent ESB criterion where suppliers fail to submit the information. A partial ESB

Statement response may be scored but must take into consideration that only part of the required information was supplied.

For procurements with a value of less than $100 000 and for non-competitive processes where an assessment of formal evaluation criterion is not undertaken (eg, an approved direct selection or a purchase from a panel arrangement), agencies should consider the objectives of the Buy Local Policy as a whole in the course of developing appropriate evaluation criteria.

Tasmanian Industry Participation Plans

Where a competitive process has been undertaken, information provided by the supplier in response to the Economic and Social Benefits criterion may be used as the basis for the development of the Tasmanian Industry Participation Plan (TIPP).

Where a competitive process has not been undertaken, or the preferred supplier has not provided an Economic and Social Benefits Statement as part of their submission, a TIPP will need to be separately prepared.

For panel arrangements where the total panel value is unable to be estimated (to determine whether the $5 million threshold will be met), it is recommended that agencies adopt a conservative approach and obtain TIPPs from all panel members.

For grants and private sector projects, the TIPP Executive Summary template and TIPP template should be adapted to suit the specific circumstances of the project. The standard templates are available on the Purchasing website in Annexes to this publication. If a modified Economic and Social Benefits template has been provided to potential suppliers in procurement documentation, the TIPP template should be modified to match.

Approved TIPPs are published on the Purchasing website.

Climate change and environmental considerations

Agencies should consider climate change and other environmental considerations in the planning design and documentation stages of a procurement. Relevant climate change considerations and criteria for inclusion in procurement documentation include:

- opportunities to reduce energy and fuel consumption;
- transport and waste disposal implications;
- environmental certifications;
- the supplier's level of commitment and/or capacity to deliver positive climate change outcomes;
- carbon emissions in the production; and/or
- utilisation of a product or in the delivery of a service.

Consultants engaged by agencies should be made aware of the Government's commitment to minimise climate change impacts and the commission brief should incorporate climate change related requirements where appropriate.

So long as they represent value for money, are of appropriate quality and functionality, and there are no technical reasons for not doing so, agencies should consider purchasing goods and services with the following attributes and options:

- efficient goods and mechanical services, for example vehicles, low energy light bulbs and low energy appliances;
- goods manufactured using energy efficient practices and processes which will contribute to minimal greenhouse gas emissions;
- goods which will contribute to minimal greenhouse gas emissions during operation;
- video or telephone conferencing as an alternative to vehicle and air travel;
- 'green power' (energy sourced from renewable sources) such as battery recharging systems;
- recycled or recyclable goods with recycled composition or components, for example recycled paper, remanufactured copier and printer cartridges, recycled tyre products and recycled plastic parks furniture, posts and signage;
- reclaimed materials, for example, crushed concrete aggregate, recycled building materials and recycled compost and mulch;
- goods which have less packaging than alternatives;
- goods with a take-back scheme at end-of-life;
- goods which guarantee longevity or are reusable, for example electronic goods designed to be recycled and refillable whiteboard markers;
- equipment that can use consumables made from recycled/recyclable materials;
- water efficient goods;
- goods manufactured with water efficient practices and processes which do not contribute to water pollution;
- goods such as refrigerants that do not involve the use of ozone depleting substances; and
- goods manufactured with water efficient practices and processes that do not contribute to decreased environmental flows.

Information on climate change is available from the Tasmanian Climate Change Office website.

Confidentiality

Information about confidentiality requirements for Tasmanian Government contracts is available in Treasurer's Instruction *C-1 Contracts - Disclosure and Confidentiality in Government Contracts* and the associated *Contracts Better Practice Guidelines*.

Engagement of goods and services contractors (including goods and services consultants)

Treasurer's Instruction PF-3 *Procurement Framework - Policies Impacting on Procurement: Goods and Services* (clauses 3.1 - 3.2) applies.

Reasons for engaging a consultant may include:

- the work is essential and the skills and expertise required are not currently available within the agency;
- the cost of undertaking the work "in-house" would exceed the cost of having the work performed by a consultant;

- the work is intermittent or "once-off" in nature;
- the experience of an external organisation is required; or
- there is a need for an objective, independent opinion.

Agencies are encouraged to:

- wherever possible, take the opportunity to use internal expertise, or to develop and retain skills in the Tasmanian State Service as an alternative to engaging a consultant or contractor; and
- where external expertise is required, take every opportunity to improve the knowledge and skills base of agency personnel during the period of the consultancy or contract and, where appropriate, facilitate skill transfer.

Full cost attribution policy on submissions from Government entities

Treasurer's Instruction PF-2 *Procurement Framework - Policies Impacting on Procurement: All Procurement* (clause 2.18) applies.

A checklist for determining full cost attribution is available on the Purchasing website, further details are in the Annexes. Further guidance in relation to full cost attribution requirements is available from economic.reform@treasury.tas.gov.au.

Insurance requirements - building and construction/roads and bridges works

Agencies should consider insurance issues as early as possible before any steps to undertake a procurement process or to engage a supplier are taken. Where a claim arises, or circumstances arise that could give rise to a claim, the Office of the Crown Solicitor (OCS) should be advised immediately or as soon as practicable.

Principal-arranged contract works and public liability insurance

Treasurer's Instruction PF-4 *Procurement Framework - Policies Impacting on Procurement: Building and Construction/Roads and Bridges* (clause 4.14) applies.

Agencies are responsible for the placement of principal-arranged contract works and public liability insurance for works projects, as required by TI PF-4.

A contract cannot be executed, and the contractor cannot commence work until the principal-arranged insurance is in place. Responsibility for effecting insurance, including the payment of premiums, rests with the agency, not the contractor.

Insurance placement is a two-stage process that is provided for in an Order Form comprising two separate components (referred to as Form 1 and Form 2). Agencies provide initial project details to the Government's insurance broker at the tendering stage of a project so a quotation can be

obtained from the insurers (using Form 1), followed by the provision of additional details (using Form 2) following identification of the successful supplier and prior to the contract being executed. The submission of Form 2 constitutes an 'Official Order' for the required insurance being placed. Following this, the agency will be issued with an invoice for payment of the premium.

When either the scope or cost of a contract is varied, the Government's insurance provider should be advised of any changes that may affect the insurance requirements. The Government's insurance broker has advised that it should be notified if:

- a contract is to be extended beyond that originally advised AND the contract period is likely to exceed 18 months from the date that the cover becomes effective (this the date of notification that the cover needs to be placed); and
- if there is a material change in risk in relation to the contract. Generally, this means a change to the contract outside of the original scope or specifications.

If in doubt, the agency should contact the Government's insurance broker for advice.

For works contracts which fall outside the policy coverage, agencies should contact the Government's insurance broker, *prior to the release of the procurement*, to ensure cover can be agreed and will be in place in a timely manner following the awarding of the contract.

The Order Form, along with information on the current policy rates and deductibles, sub-limits and exclusions and the base terms available from the Purchasing website.

Contact details for the Government's insurance broker are:

JLT Risk Solutions Pty Ltd
ph: (03) 6220 7401 | 0437 122 151
email: Andrew.Ralph@jlta.com.au

Consultancies

Treasurer's Instruction PP-5 *Procurement Processes - Engagement of Civil and Civic Consultants* (clause 5.18.4) applies.

The level of insurance required by consultants should be appropriate to the identified risk exposure and be current at the time of the engagement.

The Department of Treasury and Finance will ensure that consultants registered with its Prequalification Scheme for Consultants have a minimum level of acceptable insurance cover at the time of registration. However, this minimum level may not be sufficient to cover the contract work being undertaken. Agencies should assess the risk associated with each project and adjust the level of cover required in the contract if necessary.

The current minimum levels of insurance required for registration under the Treasury Prequalification Scheme for consultants are:

- Professional Indemnity Insurance - $ 1 million; and
- Public Liability Insurance - $5 million.

Secondary and sub-consultants should have the same insurance requirements as the prime consultant.

Information in relation to risk assessment, suggested minimum levels of insurance per contract value and explanatory information in relation to the insurance types is available in the publication *Guidelines: Professional Indemnity and Public Liability Insurance,* located on the Purchasing website.

Professional indemnity insurance

Professional indemnity insurance applies only to 'Design and Construct' and 'Design Develop and Construct' contracts and is to cover any design or documentation of the works by the contractor or sub-contractor.

The policy should cover the contractor for liability to the principal for loss (whether economic loss or other) in a single occurrence arising from errors or omissions in design or documentation of the works carried out by the contractor or any subcontractor, as detailed in the table below:

Minimum amount	**Maximum amount**
$1 000 000 or 20 per cent of the contract sum, whichever is the greater	$5 000 000

The policy should include at least one automatic reinstatement after claims have been paid.

The policy should be effected in terms approved in writing by the principal, before commencing work covered by the policies and should be maintained until the final payment certificate is issued. Before commencing work under the contract, agencies should require proof that the contractor has effected a professional indemnity insurance policy.

Insurance of employees

Before commencing work, a contractor is obliged, under Australian Standard *AS 2124-1992,* Clause 20, to insure against liability for death of or injury of any persons employed by the contractor, including liability by statute or common law.

As soon as possible after the award of the contract and before any contract work commences, the project superintendent should seek proof of insurance cover from the contractor.

International Procurement Obligations

Treasurer's Instruction PF-2 *Procurement Framework - Policies Impacting on Procurement: All Procurement* (clauses 2.1 - 2.4) applies.

Australia and New Zealand Government Procurement Agreement

The *Australia and New Zealand Government Procurement Agreement* (ANZGPA) is a cooperative arrangement between the Australian Government, the New Zealand Government and Australian state and territory governments (the ANZ jurisdictions). It applies to the procurement of goods, services and construction, irrespective of value, where undertaken by Government bodies (including statutory authorities) from the ANZ jurisdictions.

In order to ensure compliance with the Agreement, agencies should:

- conduct procurement activities in accordance with the spirit and intent of the agreement;
- not preference Tasmanian suppliers over those from another ANZ jurisdiction or discriminate against, be biased against or deny equal access or opportunity to any ANZ jurisdiction supplier;
- provide equal opportunities to all ANZ jurisdiction suppliers;
- use value for money as the primary determination in all procurement decisions;
- achieve maximum practical simplicity and consistency in the application of procurement policies, practices and procedures; and
- debrief unsuccessful suppliers on request.

Exemptions

Although the circumstances are limited, some activities are exempted from the ANZGPA.

The ANZGPA is available from the Australasian Procurement and Construction Council website.

Free Trade and World Trade Agreements

The Tasmanian Government is bound by procurement requirements in a number of international procurement agreements. The publication *International Procurement Obligations* (IPO) is available on the Purchasing website, and details the requirements that apply to procurement impacted by an international procurement agreement.

Exemptions

Specified purchases and goods or services are excluded from the international requirements. These are listed in the IPO. In addition, circumstances where limited tendering may occur are set out in the IPO.

Parliamentary Standing Committee on Public Works

Treasurer's Instruction PF-4 *Procurement Framework - Policies Impacting on Procurement: Building and Construction/Roads and Bridges* (clause 4.25) applies.

The Parliamentary Standing Committee on Public Works is required to scrutinise all major Government public works projects above a certain value, as detailed in the *Public Works Committee Act 1914*.

The value of a project should be determined taking into account the construction costs together with all consultant fees, equipment and fixed fit out costs. Where a project is to be constructed in stages spread over a period of several years and where the sum cost of the stages is expected to exceed the threshold, all stages should be considered by the Committee before construction commences on the first stage.

It is advisable to prepare for a Committee submission if the project budget (including consultant fees) is close to the relevant threshold.

A decision, in 1989, by both Tasmanian Houses of Parliament, has excluded Australian Government funded roads and bridges projects from the operations of the Act. In 1996, both Houses of Parliament also agreed to exclude road reinstatement projects that are generally contained within the road reservation from the operations of the Act. However, roads and bridges projects that are jointly funded by the Australian Government and the State Government are required to be referred in circumstances where the State Government's component is greater than the threshold above which works are to be referred to the Committee.

The submission

The information to be provided in the submission is determined by the Committee. Information on current requirements is located on the Purchasing website. Once a project has been approved, a copy of the approval should be placed on the procurement file.

Performance Security - building and construction / roads and bridges

Treasurer's Instruction PF-4 *Procurement Framework - Policies Impacting on Procurement: Building and Construction/Roads and Bridges* (clauses 4.15 - 4.21) applies.

The form of performance security should be considered during the agency's risk assessment in relation to the project. The OCS has advised that unconditional undertakings issued by an approved financial institution (unconditional bank guarantees) are the preferred form of performance security. An agency may choose to apply performance security requirements to works contracts valued at less than $500 000, at its discretion.

Unconditional undertakings issued by an insurer (unconditional insurance bonds or unconditional performance bonds)

Unconditional undertakings issued by an insurer should only be considered in limited circumstances when performance security in the form of a bank guarantee is not possible, and only when the Accountable Authority is satisfied that all the relevant conditions in clauses 4.19 and 4.20 have been met. The OCS has advised that greater uncertainties and enforcement risks may arise in relation to insurance bonds or performance bonds.

Form of an unconditional undertaking issued by an insurer (clause 4.19)

The Crown has the discretion to approve or otherwise the form of an unconditional undertaking. Acceptable form and terms are contained in the Government's approved bond template. The template is available on the Purchasing website.

Agency approved security providers (clause 4.20)

The Accountable Authority of the engaging agency may approve the use of an insurance provider only when satisfied that all requirements have been met and the agency has carried out due diligence (through the use of consultant advice where necessary) to avoid undue risks. The agency should consider factors such as the security provider's exposure across other agencies and whether the contractor's risk exposure is relative to the size of the security provider.

A list of security providers subject to APRA regulation along with further general information is available from the APRA website.

Time for Lodgement of Security

If a contractor fails to lodge the required security within the period allowed by the contract, the matter should be dealt with immediately and advice obtained from the OCS.

Retention monies

When allowing retention moneys as an option, agencies should consider the risks associated with the project and whether a proportion of upfront security should be required (in addition to retention) to mitigate those risks. Agencies should also consider other factors to avoid undue risk, such as whether a potential contractor has sufficient cash flow to allow retention amounts to be deducted from progress payments without causing adverse financial pressure.

Where security is in the form of retained receipts or deferral of payments, agencies must update the nature and timing of the financial impact of that security in their Budget estimates. For example, where funds are held until the end of a defects period, the agency should:

- Include this as part of annual Budget estimates (including updates to timing) through the annual Budget Development process in the first instance.
- If this is not possible, due to the receipt of necessary information after this process, an agency must:
  - request a rollover in accordance with section 23(1) of the Financial Management Act for capital projects funded through appropriation; or
  - adjust SPA receipts/expenditure in accordance with section 17 of the Financial Management Act for the timing differences for capital projects funded through agency own source revenue.

Pre-procurement industry consultation

Treasurer's Instruction PF-2 *Procurement Framework - Policies Impacting on Procurement: All Procurement* (clauses 2.19 - 2.21) applies.

The requirement for a pre-procurement industry impact statement applies to all procurement (unless otherwise excluded by the TIs), including limited tendering and direct selections, where the value of the procurement reaches the thresholds contained in the Treasurer's Instruction.

Where pre-procurement industry consultation is required, the details of this can be combined with the pre-procurement local industry impact assessment. A template accommodating both is available on the Purchasing website, further details are in the Annexes.

The Secretary of the Department of Treasury and Finance will only approve class exemptions where satisfied that no local market exists or where the provision of such a report serves no useful purpose in relation to improving access for local suppliers. It is expected that such circumstances will rarely arise. Approved exemptions are listed on the Purchasing website.

Prequalified contractors and consultants - building and construction / roads and bridges

Treasurer's Instruction PF-4 *Procurement Framework - Policies Impacting on Procurement: Building and Construction/Roads and Bridges* (clauses 4.3 - 4.13) applies.

The aim of prequalification is to classify contractors and consultants according to their expertise and capability in specific work categories and to prequalify those contractors or consultants for works up to a specific financial level.

To ensure contractors or consultants are not put to unnecessary effort and expense in preparing submissions, agencies should identify the relevant *prequalification category* and anticipated prequalification financial level as a guide and include this in procurement documentation and any advertisements and notices. The financial level nominated should be appropriate to the project, taking into account pre-tender estimates, but without unduly influencing costs or unnecessarily restricting participation by contractors or consultants.

For building and construction works and for consultancies, the list of the categories and maximum financial levels at which contractors or consultants is set out below.

Department of Treasury and Finance Prequalification Scheme (Consultants)		
Category		*Maximum Financial Level*
Strategic Services	Strategic Asset Management	$500 000 commission fee
	Management of Projects	$500 000 commission fee
	Management of Maintenance	$500 000 commission fee
	Heritage Conservation Planning	$250 000 commission fee
Project Services	Architecture	$50 million project cost
	Site and Civil Engineering	$10 million component cost

	Mechanical Engineering	$7 million component cost
	Electrical Engineering	$5 million component cost

Department of Treasury and Finance Prequalification Scheme (Contractors)	
Category	*Maximum Financial Level*
Building works - institutional	$50 million project cost
Building works - residential	$25 million project cost
Mechanical Services	$5 million component cost
Electrical Services	$3 million component cost
Building Systems - Monitoring and Control	$3 million component cost
Fire Services	$2 million component cost
Facilities Management and Maintenance	$5 million annual cost

Details of prequalified suppliers is available on the Tenders website (agencies require a specific Tenders website login to access the list). High level details about prequalified suppliers is available on the Purchasing website.

Procurement documentation may be provided to a contractor or consultant that is not prequalified (or is not prequalified in the relevant *prequalification category* or to the required financial level) to enable the supplier to make an informed decision on whether to apply for prequalification or a change to existing prequalification levels. It will then be a matter for the supplier to ensure that they submit all relevant paperwork, allowing sufficient time for the application to be assessed prior to the closing date of the procurement.

Where relevant prequalification categories do not exist, the standard procurement processes are to be adopted.

Under TI PF-4, an agency is able to seek an exemption from the requirement to use prequalified contractors and consultants:

- from the Secretary of the Department of Treasury and Finance;
- prior to a supplier being sought (that is, not retrospectively);
- in exceptional circumstances; and
- by providing conclusive justification of the request.

All exemptions from the requirement to use a prequalified supplier, including the justification for the exemption, will be disclosed in the Department of Treasury and Finance annual report.

While it is only mandatory for an agency to use the Treasury Prequalification Scheme (contractors) for building and construction major works, this scheme may be used by an agency for minor works at its discretion.

National Prequalification System for Non-residential Building (the NPS)

The NPS aims to create certainty and consistency and streamline the process of prequalification for contractors working in multiple jurisdictions. It applies to non-residential government building contracts where the construction cost estimate is $50 million and over in participating states and territories (below this threshold, the Building Works - Institutional category of the Treasury Prequalification Scheme may be relevant).

As the NPS is a national scheme, not all of the checks and approvals required for the Tasmanian prequalification scheme are encompassed by the NPS. To ensure that suppliers prequalified under the NPS meet Tasmanian standards, the following additional requirements should be applied:

- procurement documentation should include clauses relevant to the use of the NPS and Tasmanian specific requirements (refer to the publication *Procurement Better Practice Guidelines (Procurement Processes and Documentation)*);
- evidence of compliance with the registration requirements of the *Building Act 2016* should be sought and obtained from contractors as part of the tender response;
- a copy of the supplier's NPS prequalification approval or evidence of their NPS Mutual Recognition in Tasmania should be obtained as part of the tender response;
- an assessment of the financial capacity of the preferred contractor should be undertaken (refer to Treasurer's Instruction PP-4 *Procurement Processes - Works*, clause 4.19.2); and
- ensure completion of a contractor performance report when the contract is completed or when it is terminated due to unsatisfactory performance.

Performance reporting - National Prequalification System for Non-residential Building[1]

A pro forma report and information on how to prepare the contractor performance report is available from the Australasian Procurement and Construction Council website.

Copies of completed reports should be forwarded to prequalified@treasury.tas.gov.au.

Reports will be available to Tasmanian agencies and to entities in other jurisdictions in accordance with the requirements of the NPS. For information on accessing reports, email prequalified@treasury.tas.gov.au.

Qualified suppliers - building and construction / roads and bridges

Treasurer's Instruction PF-4 *Procurement Framework - Policies Impacting on Procurement: Building and Construction/Roads and Bridges* (clauses 4.1 - 4.2) applies.

[1] Performance reporting is not required in relation to suppliers prequalified with Treasury's Prequalification Scheme (Contractors) and Treasury's Prequalification Scheme (Consultants).

Information on relevant requirements may be obtained from the Director of Building Standards and Administrator of Occupational Licensing, Department of Justice. For clarity, the requirement does not apply to specific permits that may be required in order to undertake the project such as plumbing or building permits.

The requirement for the declaration is included in the OCS building and construction template procurement documentation. When not using those templates, it is recommended that agencies liaise with the OCS for assistance with the inclusion of relevant provisions in the procurement documentation.

Standards and Codes

Treasurer's Instruction PF-1 *Procurement Framework - Procurement Principles* (clause 1.2.5), Treasurer's Instruction PF-4 *Procurement Framework - Policies Impacting on Procurement: Building and Construction/Roads and Bridges* (clause 4.24) and Treasurer's Instruction PP-4 *Procurement Processes - Works Procurement* (clause 4.3) apply.

Australian Standard AS 4120-1994 *Code of Tendering* and Australian Standard AS 4121-1994 *Code of Ethics and Procedures for the Selection of Consultants* are available under appropriate licensing arrangements with Standards Australia.

Australian Government requirements

Where the Australian Government provides funding to projects that meet its contribution value thresholds, agencies may be required by the funding arrangement to comply with the Australian Government building and construction industry *WHS Accreditation Scheme*. Agencies should seek advice from the OCS regarding inclusion of these requirements in procurement and contract documentation.

Tasmanian Government Art Site Scheme

Treasurer's Instruction PF-4 *Procurement Framework - Policies Impacting on Procurement: Building and Construction/Roads and Bridges* (clause 4.23) applies.

The Tasmanian Government Art Site Scheme is administered by Arts Tasmania and requires that a percentage of the project capital works estimate for relevant Government construction and refurbishment projects is allocated to the purchase or commissioning of artworks. The scheme does not apply to building maintenance works, residential housing works, roads and bridges projects nor to the procurement of goods or services.

The architect, the agency, the building user and the Public Art Officer develop the artist's brief. The best results are achieved from the scheme when artworks are integrated into the building design or fabric. To achieve this outcome Arts Tasmania should be consulted early in the project planning stage.

Background information on the Scheme is available at Arts Tasmania.

Tasmanian Wood Encouragement Policy

Treasurer's Instruction PF-2 *Procurement Framework - Policies Impacting on Procurement: All Procurement* (clause 2.22) applies.

This policy is administered by the Department of State Growth. Information about the policy is available from the Department of State Growth website. All queries in relation to the policy are to be directed to the Department of State Growth.

Tasmanian Government Building and Construction Training Policy

Treasurer's Instruction PF-4 *Procurement Framework - Policies Impacting on Procurement: Building and Construction/Roads and Bridges* (clause 4.22) applies.

This policy is administered by the Department of State Growth. It supports employment and skills development in the building and construction industry by mandating the engagement of apprentices and trainees for:

- all building construction and maintenance works valued at $250 000 or more; and
- all civil construction projects valued at $5 million or more.

As defined within the *Tasmanian Government Building and Construction Training Policy* the contracting agency is responsible for ensuring contractor compliance. Further details of the policy requirements are available from the Skills Tasmania website. All queries in relation to the policy are to be directed to Skills Tasmania.

Vehicles - Government emission requirements

Treasurer's Instruction PF-3 *Procurement Framework - Policies Impacting on Procurement: Goods and Services* (clauses 3.8 - 3.9) applies.

The *Tasmanian Government Motor Vehicle Allocation and Use Policy* applies to the allocation and use of vehicles by the Tasmanian Government. The policy includes the current emissions requirements for fleet vehicles. The policy is administered by the Department of Treasury and Finance and is available from the Purchasing website or from commonuse.contracts@treasury.tas.gov.au.

Whole-of-government common-use contracts, panels and multi-use lists

Department of Treasury and Finance contracts and panels

Treasurer's Instruction PF-3 *Procurement Framework - Policies Impacting on Procurement: Goods and Services* (clauses 3.3 - 3.4) applies in relation to Treasury established whole-of-government common-use contracts and panels.

Goods and services common-use contracts and panel arrangements established by the Department of Treasury and Finance are set out below. Detailed information on the goods and services encompassed by these is available in the Contracts section of the Purchasing website.

ID	Title	Mandatory
A001	Advertising - Television (Master Ordering Arrangement)	Yes
A003	Advertising - Print Media Services for Vacancy Notices, Tenders and Public Notices	Yes
A004	Advertising - Radio (Master Ordering Arrangement)	Yes
BK04	Government Banking Services	Yes
C106	Cartage, Interstate Air Freight	Yes
C150	Information and Communications Technology Hardware Contract	Yes
DRS	External Debt Recovery Panel	Yes
F200	Fleet Management Agreement	Yes
GFAB 2022-1	Superannuation Actuarial Services	Yes
L300	Leasing Finance Facility	Yes
MS21	Microsoft Enterprise Agreement	Yes
P450	Petroleum Products	Yes
PEPPOL-02	PEPPOL eInvoicing Access Point as-a-service	Yes
TRMF 2017-1	Tasmanian Risk Management Fund - Rehabilitation Service Provider Panel	Yes
TRMF 2021-1 FAA	Tasmanian Risk Management Fund - Fund Administration Agent	Schedules 1 and 2 - Yes; Schedule 3 - No
TRMF 2022-1 Actuary	Tasmanian Risk Management Fund - Actuarial Services	Yes
TGVC	Tasmanian Government Vehicles Contract	Yes
V675	Vehicles Hire and Drive	Yes

Department of Premier and Cabinet contracts

Treasurer's Instruction PF-3 *Procurement Framework - Policies Impacting on Procurement: Goods and Services* (clause 3.5) applies in relation to DPAC established whole-of-government common-use contracts and panels.

Goods and services common-use contracts and panel arrangements established by the Department of Premier and Cabinet for use by all agencies are set out below.

Title	Mandatory
Networking Tasmania	Yes

Title	Mandatory
Integrated Communication Services	Yes

Networking Tasmania whole-of-government contracts

These contracts are to be used for data communications, hosting, internet and related services. These contracts cover core services (including central switching, security, gateway and filtering services), connection services, data centre as a service, infrastructure as a service, internet services and Government directory services.

Agencies may also purchase a number of optional services under the contracts including local area network as a service (both fixed and wireless).

Integrated Communications Services contracts

For these contracts, depending on the component, the Department of Premier and Cabinet (Digital Strategy and Services Unit) may provide the services, establish agreements under which the services may be purchased, or establish technical standards relating to the services. If an agency has a niche requirement, for example in relation to security or interconnection with a system maintained by another jurisdiction or third party, DSS can assist the agency to meet that requirement while using the Government's integrated communications services and arrangements.

Information on both the Networking Tasmania contract and Integrated Communication Services arrangements is available from DSS at digital@dpac.tas.gov.au.

Department of Treasury and Finance multi-use lists

Treasurer's Instruction PF-3 *Procurement Framework - Policies Impacting on Procurement: Goods and Services* (clauses 3.6 - 3.7) applies in relation to the Technology Services List.

Treasurer's Instruction PF-4 *Procurement Framework - Policies Impacting on Procurement: Building and Construction/Roads and Bridges* (clauses 4.3 - 4.6 and 4.9 - 4.13) applies in relation to the Department of Treasury and Prequalification Schemes.

Whole-of-government multi-use lists established by the Department of Treasury and Finance are set out below.

ID	Title	Mandatory
ROI-PPB-2010-01	Tasmanian Government Probity Adviser Directory	No
TSL	Technology Services Multi-Use List	Yes
PQ 2	Department of Treasury Prequalification Scheme (Consultants)	Yes (where appropriate categories exist)

ID	Title	Mandatory
PQ 1	Department of Treasury Prequalification Scheme (Contractors)	Yes (where appropriate categories exist)
TRMF-2017-2	TRMF Vehicle Bodywork Repairers	Yes

Department of State Growth multi-use lists

Treasurer's Instruction PF-4 *Procurement Framework - Policies Impacting on Procurement: Building and Construction/Roads and Bridges* (clauses 4.7 - 4.8) applies in relation to the State Growth Prequalification Scheme for Roads and Bridges Contracts.

Whole-of-government multi-use lists established by the Department of State Growth are set out below.

Title	Mandatory
National Prequalification System for Civil (Road and Bridge) Construction Contracts	Yes (where appropriate categories exist)

Annexes

The following annexes to this Better Practice Guideline are available on the Purchasing website under *Buying for Government > Purchasing Framework > Better Practice Guidelines*.

- Annex A - Probity Guidelines for Procurement
- Annex B - Early Market Engagement Guidance
- Annex C - Pre-procurement Local Impact Assessment and Industry Consultation template
- Annex D - Economic and Social Benefits Statement template
- Annex E - Tasmanian Industry Participation Plan (Executive Summary) template
- Annex F - Tasmanian Industry Participation Plan template
- Annex G - Unconditional Performance Bond template
- Annex H - Full Cost Attribution checklist template

FMA

Financial Management Act 2016

Procurement

Better Practice Guidelines (Procurement Processes and Documentation)

Department of Treasury and Finance

Tasmanian Government

Title: Procurement Better Practice Guidelines (Procurement Processes and Documentation)

ISBN 978-1-922945-27-3 (Online)
ISBN 978-1-922945-26-6 (Hardcopy)
First published July 2019
This version published November 2024

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Introduction

The *Financial Management Act 2016* provides for the management of the public finances of Tasmania in an economical, efficient and effective manner consistent with contemporary accounting standards and financial practices.

Treasurer's Instructions are issued under section 51 of the *Financial Management Act 2016* in respect of the principles, practices and procedures to be observed in the financial management of all agencies.

The *Better Practice Guidelines* are intended to assist Accountable Authorities and responsible officers with their financial management responsibilities, in the area of procurement. The Guidelines should be read in conjunction with the Treasurer's Instructions.

This *Better Practice Guideline* provides information to assist in understanding Treasurer's Instructions PP-1 to PP-6, which set out the processes for procurement in Tasmania.

Further information, forms, templates, checklists and publications are available from the Purchasing website (www.purchasing.tas.gov.au) and the Tenders website (www.tenders.tas.gov.au). All queries in relation to the Treasurer's Instructions, this document and the website contents should be directed to purchasing@treasury.tas.gov.au (unless otherwise specified).

International Procurement Obligations

Tasmanian Government agencies are required to comply with procurement obligations set out in a number of international agreements. The *International Procurement Obligations* publication (available at www.purchasing.tas.gov.au), sets out the mandatory requirements that relate to procurements covered by the international agreements.

Please note that the *International Procurement Obligations* should be read in conjunction with the Treasurer's Instructions and *Better Practice Guidelines*, as they impose additional requirements agencies need to be aware of when undertaking covered procurements.

Valuation of procurement

Treasurer's Instruction PP-1 *Procurement Processes - Valuation* applies.

As different rules may apply to a procurement based on the estimated value, it is important that agencies estimate value as accurately as possible and document any assumptions or calculations to justify that estimate.

Where a procurement is by lease, rental or does not specify a total price, an acceptable (but not mandatory) method for valuing the procurement is:

- for a fixed-term contract where the term is 12 months or less, the total estimated contract value for the contract's duration;
- for a fixed-term contract where the term exceeds 12 months, the total estimated contract value including any estimated residual value payable at the end of the contract; or
- for a contract for an indefinite period or where there is doubt as to whether the contract is to be fixed-term, the estimated monthly instalment multiplied by 48.

Where the total maximum value of a contract over its entire duration cannot be estimated, a procurement is deemed to be a procurement to which the provisions of relevant international procurement agreements apply (a covered procurement).

Thresholds referred to in the procurement Treasurer's Instructions are GST exclusive ***except*** where determining a value for international procurement agreement purposes. When determining whether an international procurement agreement applies, the estimated value of a procurement is to ***include*** any applicable taxes or charges, including GST.

Market Approaches

Treasurer's Instruction PP-2 *Procurement Processes - Market Approaches* applies.

Relevant factors to take into consideration when determining the appropriate process for approaching the market include:

- whether there are any relevant mandatory or optional whole-of-government common-use or whole of agency multi-use contracts, panel arrangements or multi-use lists;
- the available market and results of the market research undertaken;
- complexity and risk, for example, is industry input required to assist in identifying a solution meaning that a multi-stage process would be more suitable;
- the need for industry or supplier input;
- the Government's policies, for example supporting Tasmanian businesses, supporting businesses that provide employment to persons with disabilities etc; and
- the impact of a particular approach on the market, for example processes that require suppliers to undertake undue effort to respond.

While the value of the procurement dictates the minimum market approach process that applies, agencies may choose to adopt an approach above this. Once a specific market approach is chosen, all relevant requirements that flow from that choice must be adopted.

Engagement of prequalified consultants

The options available when engaging prequalified building and construction / roads and bridges consultants, where the procurement is not a covered procurement or limited tendering does not apply, are:

- single submissions sourcing; or
- multiple submissions sourcing.

Single submission sourcing

A submission from a single consultant is the least resource intensive for both the agency and the supplier and this approach has been accepted by the consulting industry for projects with the values set out in TI PP-2, clause 2.2. This approach reduces the costs to both Government and the consulting industry, which are incurred through providing multiple submissions for projects that have a low capital value and consequently little scope for recovering these costs.

Before selecting a consultant, agencies should prepare a list of selection criteria framed to ensure a successful project. The following are typical criteria:

- expertise in the type of project proposed;
- ability to develop a brief;
- ability to develop functional requirements;
- technical and management skills;
- previous experience and track record;
- methodology and project control methods;

- time, cost and quality performance on previous projects;
- design approach;
- qualification, experience and availability of key personnel; and
- knowledge of the political, social and environmental issues.

In addition, agencies should identify an estimated fee for the proposed consultancy. If in-house expertise is not available, an independent expert should be engaged to provide advice on the estimated fee.

The decision to request a single submission and the procedures applied should be scrutinised by a senior officer within the agency who is not directly associated with the project. Agencies need to ensure the process is fair. For example, where there are equally suitable consultants for particular engagements, agencies should be mindful of not necessarily engaging the same consultant every time, but rather allowing other suitable consultants the opportunity to undertake the work.

Multiple submission sourcing

Multiple submission sourcing is used for projects with the values set out in TI PP-2, clause 2.2. To contain costs to industry, generally multiple submissions should be sought from three consultants only. However, a larger pool (including an open tender) may be conducted where it is considered necessary.

Multiple submission sourcing requires:

- that consultants making a submission will each develop a proposal to provide the required service; and
- the procuring agency to nominate an evaluation committee to assess the submissions.

In establishing the basis for assessing proposals and selecting the preferred consultant, it is important that evaluation criteria are included in the commission brief. The basis of evaluation must be clearly defined and consistently applied. The following guidelines should be applied in determining the evaluation criteria, weighting(s) and evaluation methodology:

- criteria are derived from the project terms of reference;
- criteria are relevant;
- criteria are defined clearly to allow them to be applied consistently;
- criteria are identified before applying the weighting;
- weighting scales to be applied are defined; and
- the method of scoring is defined.

Potential conflicts of interest may occur where members of the selection panel have had previous experience with the consultants submitting proposals. It is therefore important to establish a strong element of independence on the selection committee to ensure that a consistent and impartial approach is taken.

Procurement valued at less than $100 000

This market approach method does not apply to the engagement of prequalified consultants.

The appropriate market approach is at the Accountable Authority's discretion. The more common options an agency will use in these circumstances include direct selection of a supplier or seeking a suitable number of quotes. In determining the appropriate market approach method, agencies should consider:

- the type of goods or services required;
- availability of the required goods or services, including whether goods are of an off-the-shelf variety or will need some form of modification or adjustment for purpose;
- whether seeking quotes would increase value for money outcomes;
- timing restrictions;
- impact on suppliers;
- whether the goods or services are sold subject to acceptable standard terms and conditions; and
- the level of risk associated with the purchase and whether this can be managed by the agency.

For procurements valued at less than $100 000, agencies should approach Tasmanian businesses first, where there is local capacity, capability and value for money in local offerings.

All the mandatory requirements of the Treasurer's Instructions relating to procurement processes apply to these procurements, unless otherwise specifically excluded by the Treasurer's Instructions. Additional information is available in the *Procurement Better Practice Guidelines (Accountability and Reporting)*.

Procurement valued at less than $500 000 (or $250 000 for goods and services)

This market approach method does not apply to the engagement of prequalified consultants.

For the procurement of goods and services valued at less than $250 000, or the procurement of building and construction / roads and bridges works valued at less than $500 000, the minimum market approach is a quotation process, seeking at least three (3) quotes from suitable providers. Provided at least three suppliers are approached, agencies may proceed based on the received submissions regardless of how many respond.

For procurement at this value, agencies may also use an open tendering process, approach suppliers on a multi-use list or undertake selective tendering in appropriate circumstances.

Procurement valued at $500 000 or more (or $250 000 for goods and services)

For procurement of goods and services valued at $250 000 or more, or the procurement of building and construction / roads and bridges works valued at $500 000 or more, an open tendering process is required.

An open tendering process should be used if an agency is uncertain of the value and there is a chance that the purchase may be greater than the open tendering threshold.

An open tendering process is a market approach that is open to all suppliers who wish to respond.

Single market approach

A single approach to the market is generally used where the agency has a good idea of its own requirements and is aware of the market. A notice calling for submissions is required to be published on the Tenders website (more information about the Tenders website is available in the 'Publishing procurement notices on the Tenders website' section).

Selective tendering

Multi-staged procurement (EOIs and RFPs)

Multi-staged procurement is generally used to gain market knowledge or industry input or to enable shortlisting of appropriately qualified suppliers.

- An expression of interest (EOI) is generally used when the agency is unsure of the capability of suppliers to provide the required goods, services or works.
- A request for proposal (RFP) is generally used when the project or requirement has been defined by the agency but an innovative or flexible solution is sought.

The first stage of either approach involves inviting suppliers who have the capacity to respond. A notice calling for EOIs or proposals is required to be published on the Tenders website. The second stage involves the responding suppliers being requested to submit a detailed bid. Shortlisting may occur between the first and second stage where the specific requirements set out in TI PP-2 *Procurement Processes - Market Approaches* are met.

A multi-stage purchasing process may be more costly and time-consuming for both suppliers and agencies. It should only be used where:

- the best way to meet the requirement is unclear;
- it reduces the cost to industry and the agency;
- it is considered appropriate to prequalify businesses and restrict the issue of formal open tenders (to reduce the cost of tendering);
- there are benefits which cannot be obtained by researching the market through conventional means; or
- maximum flexibility is required throughout the procurement.

*Note: A Request for Information is **not** a procurement process. It is only to be used to solicit information from suppliers that will assist in the development of the project or requirement and must not be used to select or identify a supplier. It also cannot be used to limit those persons to approach with a Request for Tender. It is generally used at the planning stage of a project to assist with defining the project or requirement. When using an RFI, issues relating to intellectual property and copyright must be clarified prior to using the information obtained to prepare any quotation or tender documentation. Crown Solicitor advice should be sought.*

Establishing a Multi-use list

Where specific goods or services are acquired on a regular basis from a various range of suppliers, an agency may establish a multi-use list.

The process of establishing a multi-use list is not itself a procurement, but rather a form of registration, as a value for money assessment is generally not undertaken.

The multi-use list may include an unlimited number of suppliers and suppliers may be added either continuously or annually. The list may operate indefinitely and usually does not reference pricing. Therefore, suppliers included on the multi-use list should not be engaged without undertaking a procurement process, which will include satisfying specified conditions for participation. Once a list is established, agencies may use the list as a condition for participation in a quotation or open tendering process or as a means for selecting participants in a selective tendering process.

When first advertised, agencies should request applications from at least two Tasmanian businesses. As the multi-use list will be used for multiple procurements, it is recommended that as many Tasmanian businesses as can be identified should be advised of the establishment of the multi-use list.

Multi-use lists differ from panel contracts.

Panel contract arrangements

In certain circumstances, an agency may wish to establish a contract with a panel of multiple suppliers.

A panel contract is an arrangement under which a number of suppliers may each supply specified goods or services (including construction and works, such as repetitive minor works or maintenance activities) to an agency (or agencies). A panel contract will always include multiple suppliers[1].

Panel contracts are generally used for goods or services that are regularly or frequently purchased by an agency. One of the main benefits of a panel contract is that, once established, it enables

[1] An agency may establish a contract with a single supplier (as opposed to multiple suppliers) for the repetitive supply of specified goods or services. This is often referred to as a standing offer arrangement. It is not a panel contract if there is a single supplier.

subsequent purchases to occur without the agency having to engage in a full procurement evaluation process each time the goods or services are required.

Panel contracts have a finite number of suppliers and operate for a set contract period (which can include extensions). A panel contract can be set up so that new suppliers can be added at certain times during the contract period. There is no guarantee that any supplier contracted under a panel arrangement will be called upon to supply the goods or services. If it is known that the market in which a panel arrangement is being established changes frequently, or it is a relatively new market, it may be appropriate to establish a short contract period (i.e. a maximum of three to five years). Establishing a panel contract is more complex than a standard contractual arrangement. Multi-agency panels are a particularly complex arrangement, both in relation to the procurement framework and documentation required. It is strongly recommended that advice is sought from the Office of the Crown Solicitor (crown.solicitor@justice.tas.gov.au) early in the planning process if an agency is intending to establish a panel contract.

Establishing a panel contract - process and documentation

The requirements of the Treasurer's Instructions apply when undertaking a procurement to establish a panel contract. A panel contract should be established through an open tendering process and suppliers selected following a full assessment against evaluation criteria.

If it is intended that the panel contract will provide for new suppliers to be added at certain times during the contract period, it may be appropriate for agencies to use a benchmarking approach (as opposed to a comparative analysis of suppliers) during the evaluation process, to ensure consistency and equitable treatment of tenderers. Queries about using benchmarks in evaluation processes can be emailed to purchasing@treasury.tas.gov.au.

Due to the nature of the procurement and contract documentation required when establishing a panel contract, agencies should seek advice from the Office of the Crown Solicitor in relation to drafting of the requisite documentation.

If the estimated total value of goods or services to be procured through the panel contract during the contract period (including any extension) is estimated to be more than $5 million, a Tasmanian Industry Participation Plan is required from each successful supplier (refer TI PF-2 *Policies impacting on procurement: all procurement*).

Following the evaluation process and identification of successful suppliers, a contract will be entered into between the agency and each supplier, detailing:

- the types of goods or services the supplier can provide;
- either a fixed price, schedule of rates, or agreed hourly rates for those goods or services; and
- the method(s) for purchasing or placing orders from the panel contract.

Reporting the establishment of a panel contract

The requirements of Treasurer's Instruction PF-5 *Accountability and reporting* apply when a panel contract is established. This includes:

- If the overall estimated value of goods or services to be procured through the panel contract is $50 000 or more, details of the panel contract must be published on the Tasmanian Government Tenders website.
- The Tenders website awarded notice must be submitted to Treasury within 10 working days of the first contract being awarded under the panel. As contracts with other suppliers are executed, the details of these suppliers should be added to the Tenders notice within 10 working days.

When completing an awarded notice, agencies should select the 'Panel Contract' procurement method. This will enable successful suppliers to be added as and when contracts are executed (the 'Standing Offer' procurement method should only be used where there is a standing offer arrangement with a single supplier). Additional guidance on reporting awarded contracts on the Tenders website is available in the *Awarding tender and contract notices* agency user manual.

Panels are also required to be reported in an agency's Annual Report, if the overall estimated value of goods or services to be procured through the panel contract is $50 000 or more (refer clause 4.1.8 of Treasurer's Instruction FR-4 *Annual Reports*).

Purchasing from a panel

When a panel is established, the relevant procurement and contract documentation must outline how the panel contract will operate. This includes how purchases from the panel contract will be conducted. For example, it may be appropriate for a modified quotation process to be undertaken for purchases of a certain value, to ensure value for money is achieved.

Once a panel contract has been established, the 'procurement' is complete. While some elements of the Treasurer's Instructions do not apply, there are a number of procurement principles and requirements that must be taken into consideration. These are specifically set out in the TIs and include, for example:

- conducting purchases from the panel contract in a manner that is consistent with the procurement principles and the Tasmanian Government Buy Local Policy (see below);
- applying accountability and reporting requirements to purchases from panel contracts; and
- ensuring the requirements of TI C-1 that apply to panel purchases are met.

To make a purchase from a panel contract, an order is required to be placed with the relevant supplier under the panel contract. Individual purchase orders are not required to be reported on the Tenders website given that the original procurement process has already been reported.

Buy Local Policy requirements

The Tasmanian Government Buy Local Policy includes requirements that apply to purchases from a panel contract. These requirements are outlined below.

In circumstances where a competitive selection process is undertaken within a panel (e.g. via a modified quotation process), agencies should consider, if possible, approaching a least two Tasmanian businesses to ensure that Tasmanian businesses are given every opportunity to compete and be successful in relation to the purchase.

While an Economic and Social Benefits test will have been applied at the stage that the panel contract is established, agencies could consider applying the Economic and Social Benefits criterion to any competitive selection process that is run within the panel contract, provided it is not contrary to the processes governing the selection of suppliers as set out in the contract. This could be accomplished by using the scores applied when the panel contract was established or by requesting that suppliers update their original Economic and Social Benefits Statement to reflect the specific purchase being undertaken. The weighting that should be applied, at this stage of the purchasing process, is a matter for the agency to consider.

Limited tendering

Limited tendering occurs where an agency either negotiates directly with a single supplier (direct sourcing) or approaches a limited number of suppliers (limited submission sourcing). There are a number of circumstances where limited tendering may apply. Each has its own rules and restrictions.

While these alternative methods impact how the market is approached, unless otherwise stated below, all other requirements of the Treasurer's Instructions will continue to apply.

Limited tendering from businesses that provide employment to persons with disabilities

Treasurer's Instruction PP-2 *Procurement Processes - Market Approaches* (clauses 2.15 to 2.16) applies.

Agencies may choose to either seek quotations or purchase directly, at their discretion, from businesses that predominantly exist to provide the services of persons with a disability. The process undertaken should be consistent with the intent of the Government's procurement policies and the procurement principles. Where more than one business can meet an agency's requirements, agencies are encouraged to seek quotes from a number of suppliers to ensure that value for money is achieved.

Information in relation to Australian Disability Enterprises, including guidance on those operating in Tasmania, can be located on the Buyability website.

Direct or Limited submission sourcing

Treasurer's Instruction PP-2 *Procurement Processes - Market Approaches* (clauses 2.18 - 2.19) applies.

Direct or limited submission sourcing processes should only be adopted following full and proper consideration. It should not be used for the purposes of avoiding the usual competitive procurement process. The circumstances rarely arise, and approvals should be granted only where to do so is in the best interests of the State and where the proposed purchase will clearly achieve the best overall value for the money spent.

As with all Government procurements, agencies need to ensure that any direct or limited submission sourcing is undertaken in a manner that is consistent with the procurement principles. This is particularly important given the exclusive nature of direct or limited submission sourcing which lends itself to allegations of unfair or inequitable treatment of suppliers. Accordingly, conflicts of interest or any other situation that may impinge, or might be deemed to impinge, on impartiality must be avoided at all times.

Any request for approval of direct or limited submission sourcing by an Accountable Authority should contain sufficient information to justify the use of a direct or limited submission sourcing process rather than the usual quotation or tender process, for example:

- details of the research undertaken to identify and justify that one or more of the direct/limited submission sourcing circumstances exists;
- evidence of value for money considerations;
- details of the identified supplier/s; and
- the estimated total value of the procurement.

When asserting sole supplier circumstances agencies should undertake market research. Where international procurement obligations apply, research should also include the market of all countries party to those agreements. Market research could include referral to industry specific articles and publications; databases and registers of suppliers and telephone directories; internet and other searches; and consultation with counterparts in other jurisdictions.

The *International Procurement Obligations* publication provides the circumstances in which direct or limited submission sourcing may be approved for a covered procurement. These circumstances largely align with the provisions of TI PP-2. Agencies should note that clause 2.18.10 of TI PP-2 cannot be used for a covered procurement, as this is not provided for in the IPO.

Alternative Buying Opportunities (multi-agency procurements)

In some cases, agencies may collectively procure. Alternative buying opportunities include:

- 'piggybacking'; and
- 'collaborative procurement'.

These buying opportunities use the standard market approaches referred to above to establish contracts that may be used by more than one agency.

Piggybacking

Another agency may have already conducted a procurement and signed a contract with a supplier, or established a panel arrangement or a multi-use list, to provide goods or services that are of interest to another agency. Provided the original procurement and the established contract allow, it may be beneficial for the second agency to 'piggyback' off the original contract. However, care needs to be taken to ensure that value for money is still achieved.

There are certain requirements that apply before piggybacking is possible:

- the potential use of the arrangement by other agencies should have been specified at the start of the procurement, so suppliers are aware of multi-agency use of goods and services;
- the potential use of the arrangement by other agencies should be taken into consideration when valuing the procurement;
- the terms of the contract should specify that there is potential use by other agencies and specifically allow for other agencies to back onto the contract; and
- the respective needs of agencies should be the same.

When 'piggybacking', all other requirements of the Treasurer's Instructions will continue to apply.

Collaborative procurement

Collaborative procurement occurs when more than one agency approaches the market with a single procurement request. This is a way of reducing costs and duplication when two or more agencies have the same procurement needs. In such cases, one of the agencies will take a leading role and undertake administrative tasks such as preparing the request for tender documentation, opening the tender, and finalising the resultant contract.

All agencies party to the collaborative procurement should be specified in the documentation at the start of the procurement, and they should also be detailed in the terms and conditions of the resultant contract.

There should be no difference in the nature of goods or services being procured by each agency.

Building and construction / roads and bridges consultancies additional guidance

Regardless of whether consultants are prequalified or not, in addition to the mandatory requirements contained in Treasurer's Instruction PP-5 *Procurement Processes - Engagement of Civil and Civic Consultants* and the information above, agencies should refer to the *Procurement Practices Manual - Best Practice for the Engagement of Consultants (Civil and Civic)* (PPM), located on the Purchasing website for guidance information relating to:

- when consultants may be required;
- agency and consultant relationship;
- fees levels and quality of services; and
- developing the commission brief, brief contents and commission contracts.

Publishing procurement notices on the Tenders website

Treasurer's Instruction PP-2 *Procurement Processes - Market Approaches* (clause 2.20) applies.

A notice may be placed on the Tenders website through the publication of an Open for Bids or New Tender Notice. Once approved by an agency's Administrator, the notice is published on a Saturday (to be designated by the agency).

At publication, system generated emails are sent to suppliers registered with Tenders, alerting them to relevant opportunities in the categories for which they have registered.

Agencies may, at their discretion, place advertisements in local, interstate and overseas newspapers or journals. The Tenders website may be used to automate placement of advertisements in the key major Tasmanian newspapers.

Information on notice requirements is available from the *Tasmanian Government Tenders Website Agency User Manual* (only available from the Tenders website with an agency login). The Tenders System Analyst is also available to provide advice, guidance, training and additional information and may be contacted on phone 03 6145 5888 or by email at tenders@treasury.tas.gov.au.

Pre-procurement activities

Pre-procurement activity

Prior to commencing a procurement, an agency should:

- establish the business need and specify what is to be purchased;
- identify procurement requirements, such as those imposed by the Treasurer's Instructions, together with any agency specific requirements;
- undertake market research to identify solutions and an estimate of cost;
- identify potential suppliers including potential Tasmanian suppliers;
- consider whether a business case or a risk analysis will be required;
- determine whether international procurement obligations will be triggered by the purchase;
- determine who will be responsible for the various components of the procurement, for example the development of the specification, the evaluation of responses and eventual contract management;
- identify relevant applicable procurement rules and requirements including any agency specific requirements;
- consider whether a formal procurement plan will be required (a Procurement Plan template can be located on the Purchasing website);
- consider whether a formal or informal pre-procurement local impact assessment will be required;
- estimate the value of the procurement and identify an appropriate procurement strategy, for example are there any whole-of-government common-use contracts that must be used; can an Australian Disability Enterprise provide the goods or services; will selective tendering be of use; is approval for limited tendering required or are there any alternative buying opportunities available;
- where appropriate, establish an evaluation committee; and
- prepare the procurement documentation.

Prior to advertising the procurement or issuing the documentation, an agency should ensure:

- that the accuracy and completeness of procurement documents have been checked prior to advertising or releasing the documents; and
- sufficient complete sets of procurement documents (specifications, drawings, Bills of Quantities etc.) are available for distribution, if the documents are not being distributed electronically.

For building and construction projects, the agency should also ensure:

- agency officers are aware of the roles and responsibilities of the various participants in construction projects;
- for relevant projects, approval has been sought from the Parliamentary Standing Committee on Public Works;

- it has possession of the site and that all relevant Local Government planning and State and Federal legislative requirements have been satisfied;
- where the site is not owned by the Crown, the building owner's consent has been obtained; and
- whether the project site is in the Tasmanian Heritage Register and the requirements of the *Historical Cultural Heritage Act 1995* are met.

Establishing an evaluation committee

An evaluation committee is responsible for:

- evaluating offers in accordance with the conditions for participation, evaluation criteria and pre-determined evaluation methodology (generally set out in a procurement plan);
- documenting the evaluation process;
- preparing and endorsing an evaluation report;
- seeking approval from the agency Procurement Review Committee (where required) and final approval to proceed with a contract with the preferred supplier from the appropriate authorised officer within the agency; and
- debriefing unsuccessful suppliers.

The Chairperson of the committee is generally responsible for:

- ensuring that committee members are aware of necessary procurement rules and processes and their responsibilities, including those relating to declaring conflicts of interest, confidentiality of information received and security of documentation;
- managing the evaluation and decision-making process;
- maintaining and promoting probity in the procurement; and
- preparing the report to the agency's Procurement Review Committee (where appropriate).

The committee should have the appropriate mix of technical and practical knowledge and skills to ensure that the procurement results in the best outcome for government. This will often include the person(s) who are responsible for preparing the specification and the person(s) who will be responsible for administering the contract - to enable identification and assessment of the risks associated with the purchase.

In appropriate circumstances, it might be prudent to include people with relevant skills in the following areas:

- technical analysis (for example for scientific or IT purchases);
- financial assessment;
- probity; and
- law.

If expertise is not available within the agency, it may be necessary to seek specialist advice to assist with the evaluation process.

The evaluation committee should consider developing a plan to guide and assist in the evaluation of submissions. A template procurement plan can be located on the Purchasing website. The plan

should outline conditions for participation, evaluation criteria, evaluation methodology and committee member responsibilities.

A well-prepared plan ensures:

- probity in the evaluation process;
- the selection of the best value for money offer; and
- a result that can be justified.

Procurement documentation

Treasurer's Instructions PP-3 *Procurement Processes - Goods and Services Procurement*; PP-4 *Procurement Processes - Works Procurement*; and PP-5 *Procurement Processes - Engagement of Civil and Civic Consultants* apply.

The procurement documents (ie a request for tender or request for quotation document) are the basis of the contract between the Crown and the successful supplier. They should reflect the physical, financial, contractual and time parameters of the goods, works or services required. The documentation should include:

- all information necessary to enable potential suppliers to prepare appropriate submissions;
- relevant terms and conditions;
- details of applicable Government policies;
- a clear description of the purchasing requirement;
- any required performance measures;
- delivery requirements; and
- any mandatory clauses required by the Treasurer's Instructions specifically or Government policy generally.

Procurement documentation will generally consist of:

- Conditions of quotation or tender - for example, the conditions upon which the agency is prepared to receive and evaluate offers, including any conditions for participation, evaluation criteria and weightings as well as information on relevant Government policies and advice on the closing date, time and place of lodgement and agency contact details etc;
- Specification - a comprehensive description of the agency's requirements including the functional and technical requirements;
- Conditions of contract - the terms of the contract by which the successful supplier and the agency will be bound;
- Economic and Social Benefits Statement - details the broader economic and social benefit that contracts with suppliers will have on the Tasmanian community; and
- Tender or Quotation response forms - response schedules that detail information to be provided, including a summary of costs where appropriate.

Approaches to the market to establish a panel contract arrangement should, in addition to the usual requirements, include additional information. See the Panel Contract Arrangements section for more information.

The Specification

The specification describes the essential requirements of the goods, works or services being purchased. Its purpose is to communicate the agency's requirements to potential suppliers, guide supplier responses and help the agency to evaluate offers by providing a basis for comparability.

There are three main approaches to the content of a specification:

- a technical approach - physical characteristics, types of materials, size, etc;
- a functional approach - outlines the outcomes required; and
- a performance-based approach - details the performance required but not the methods required to achieve same.

For most procurements, the second and third approach will enable suppliers to put forward innovative and potentially cost-effective solutions to meet agency requirements rather than restricting the supplier to solutions that may not achieve the best outcome for the agency.

The content and structure of the specification will depend upon the nature and complexity of the requirement. Users of the goods, works or services and the evaluation committee should be involved in developing the specification.

A poor specification may result in the product or service not being delivered as required; offers from unsuitable suppliers or no offers because the department's requirements are unclear; the need to issue addenda clarifying the specification to potential tenderers during the tender process; and contract variations. Therefore, sufficient time should be provided for in the procurement planning process for this step to occur.

When using the procurement template documents prepared by the Office of the Crown Solicitor, the specification will generally form part of the resultant contract. Contact the OCS (crown.solicitor@justice.tas.gov.au) for assistance if required.

Tips for drafting a specification

- Identify relevant value for money considerations - the specification must address value for money.
- Consult with users to determine their needs, including whole-of-life requirements, for example, servicing, maintenance and possible future upgrades or enhancements.
- Write the specification:
    - describe user requirements in terms of outputs, functional and performance characteristics (including quantity, quality and timelines).
    - use open and generic descriptions - where brand names or trade marks are used in order to precisely or intelligibly describe the procurement requirements, words such as "or equivalent" should be included in the specification;
    - ensure that the requirements are clear, accurate and complete and do not unintentionally preclude Tasmanian businesses from bidding;
    - do not include unnecessary features;
    - write in plain English - the specification should be easy to read and understand;
    - clearly indicate which requirements are mandatory;
    - number each clause so that the suppliers can easily identify any requirements; and

    - refer suppliers to the evaluation criteria so that they understand how their offer will be assessed and can focus their response accordingly.
- Determine the evaluation criteria. Make sure that the evaluation criteria will enable you to determine whether the requirements of the specification have been met and how well. Clarify the requirements, if necessary.
- Get users and other stakeholders to review the specification to confirm that it meets their needs.
- For complex or highly technical requirements, external technical expertise may be required. Where this is to occur, ensure that:
    - the specification is not biased towards the company or consultant that supplied the assistance;
    - other businesses are given sufficient time to gain an equal understanding of the requirement; and
    - the company's involvement in preparing the specification is disclosed.

Conditions for participation

Conditions for participation are the minimum mandatory conditions that potential suppliers must meet for their submission to be considered. Examples of possible conditions for participation include prequalification or pre-registration requirements, required licences, professional accreditations or registrations.

The conditions for participation should be clearly marked as mandatory and the procurement documentation should clearly indicate that a failure to comply with the requirements will eliminate the supplier from further consideration.

Conditions for participation are assessed as either being 'met' or 'not met' in the first stage of evaluation of their submission. Non-conformity or non-compliance will eliminate a supplier from further consideration. Therefore, it is important to carefully consider what, if any, conditions should be included. Only submissions that comply move on to the evaluation stage.

Evaluation requirements

Evaluation criteria

Evaluation criteria provide a mechanism for comparing offers through assessment of the relative worth of different submissions. Generally, the evaluation criteria will address:

- the capability of the bidder to fulfil the requirement;
- technical and management competence;
- financial viability;
- relevant skills, experience and availability of key personnel;
- compliance with contractual terms and conditions;
- the technical merit of the goods or services offered;
- whole-of-life costs;
- the risks or constraints associated with the offer; and
- mandatory inclusions such as the Economic and Social Benefits Test.

It is important that the information requested from suppliers is sufficient to enable proper evaluation and comparison of submissions. To achieve best value for money, where possible, all out-of-pocket and incidental expenses should be included in the quotation/tender price, otherwise these can quickly grow to outweigh the benefits, particularly with such expenses as airfares, accommodation and meals. It is therefore useful to request that the information be provided by suppliers in a Quotation or Tender Response Form to ensure that the information provided by each supplier is complete and provided in a consistent, organised format, which will assist in the evaluation process. For example, specifying responses be based on hourly/daily rates, setting rates for other expenses[2] will enable evaluation panels to easily align and compare offers received.

Further guidance information is available in the publication *Guide for evaluating fees when engaging consultants or contractors*, available on the Purchasing website.

The evaluation criteria should not change once the procurement documents are issued. If they are, then addenda must be issued advising suppliers of the change. The criteria cannot be changed once submissions are received/opened.

Evaluation methodology

The evaluation methodology should be determined at the same time that the evaluation criteria are developed. It should be documented and, as for the evaluation criteria, it cannot be changed once submissions are received. Two common evaluation methodologies are provided below.

Least cost methodology

The "least cost" methodology is useful for simple low-cost purchases. It simply involves selecting the lowest priced response that meets all of the essential conditions.

Weighted scoring methodology

This methodology is useful for evaluating purchases where the evaluation criteria are of differing importance. It is the preferred method for most procurements. Each evaluation criterion is allocated a percentage weighting - adding up to a total of 100 per cent. Care needs to be taken to assign meaningful relative weightings.

Upon receipt of submissions, after screening out those offers that do not comply with the conditions for participation, each qualitative criterion is allocated a score. The score is then weighted, which is calculated by multiplying the weighting factor by the score. The weighted scores can then be totalled, allowing for comparison between offers.

For building and construction major works projects it is recommended that the evaluation assessment be in accordance with the publication, *Guidelines for Tender Evaluation Using Weighted Criteria*. This method can also be used for appropriate minor works projects.

Formal request documentation

[2] For example, stipulating the use of the standard public sector allowance rates for travel expenses.

The Office of the Crown Solicitor (OCS) has prepared and issued template procurement documentation together with a number of stand-alone contracts, for use in a variety of different procurement categories. These documents are available on the Purchasing website.

For goods and services procurement, use of the OCS template documentation is required as set out in Treasurer's Instruction PP-3 *Goods and services procurement*.

For building and construction / roads and bridges works procurement, use of the OCS template documentation is required as set out in Treasurer's Instruction PP-4, clauses 4.23 and 4.24.

In circumstances where use of the OCS templates is not mandated in the Treasurer's Instructions, use of the templates is strongly encouraged, especially where an agency is procuring goods or services that may be high risk or otherwise complicated. The templates have been drafted to ensure all requirements of the Treasurer's Instructions are met.

Where templates are used and amended, OCS advice should be sought. Note: individual components of the OCS templates are interdependent and as such, should not be used in isolation without first seeking OCS advice.

Where the templates are not used or are not available, agencies are encouraged to involve the OCS in the preparation of appropriate documentation.

Where the Conditions for Tender and Conditions of Contracts are required to be approved by the OCS, the requirement for OCS approval is met if the templates are used without material amendments. Where the templates are used but materially amended, the documents are to be submitted to the OCS for approval.

Any queries in relation to the templates are to be referred to the OCS (crown.solicitor@justice.tas.gov.au).

Contract documentation

Treasurer's Instruction PP-3 *Goods and services procurement* and Treasurer's Instruction PP-4 *Works procurement* apply.

Minor works

Minor works valued at less than $50 000

For minor works valued at less than $50 000 which are low risk, the Short Form Minor Works Contract (in the form approved by the OCS) may be used.

Agencies may also use the OCS Minor Works Contract or the Amended AS 4905-2002 Minor Works Contract Conditions (Superintendent Administered), (in each case in the form approved by the OCS) for such works, or for works of that value which are not low risk, as appropriate.

Minor works valued at $50 000 or more

For minor works projects valued at $50 000 or more, the OCS Minor Works Contract or the Amended AS 4905-2002 Minor Works Contract Conditions (Superintendent Administered), (in

each case in the form approved by the OCS) must be used unless agencies are otherwise advised by the OCS, in which case the alternative form of procurement and contract documentation recommended by the OCS must be used.

Major works

For projects involving construct only contracts, a Request for Tender document and Amended Australian Standard AS 2124-1992 General Conditions of Contract (in the form approved by the OCS) must be used, except where agencies are otherwise advised by the OCS, in which case the alternative form of documentation recommended by the OCS must be used.

For projects involving design and construct contracts, a Request for Tender document and Amended Australian Standard form of contract (in the form approved by the OCS) must be used, except where agencies are otherwise advised by the OCS, in which case the alternative form of documentation recommended by the OCS must be used.

Use of the OCS approved forms of minor and major works contracts

As indicated on the Purchasing website, agencies are only able to access some forms of contract that use Amended Australian Standards from their Procurement Reference Group member.

The OCS has prepared a Building and Construction Template Overview (available on the Purchasing website), which provides guidance to agencies to assist in determining when certain templates should be used.

The OCS has prepared a Building and Construction Template Guide that provides comprehensive instructions and advice in relation to the use of the OCS minor and major works contracts. Agencies should refer to that Template Guide when preparing a minor or major works contract.

Agencies should contact the OCS (crown.solicitor@justice.tas.gov.au) to request a copy of the Template Guide. Unless approved by the OCS the Template is only available, from OCS, to agencies and entities that are required to comply with the Treasurer's Instructions issued under the *Financial Management Act 2016*.

Australian Standards

When a form of contract that uses an Australian Standard is to be used, agencies should ensure they have appropriate licensing arrangements in place. Licensing arrangements for use of the Australian Standards are available from Standards Australia.

To comply with licensing arrangements, each agency should ensure it stores Australian Standards licensed material securely, and record, report and pay for royalties incurred each year, along with any other terms of the agreement. Licensing arrangements should be renewed in a timely manner to ensure no lapses in coverage. For ease of document management, licence numbers can be retained from year to year (provided the licence is renewed prior to its expiry date).

Following the introduction of a new building and construction contract suite on 1 September 2023, agencies should have in place a licensing arrangement with Standards Australia that enables them to store, use, modify and distribute full text versions of AS 4000-1997, AS 4902-2000 and AS4905. As part of the transition, the Office of the Crown Solicitor provided

each agency with an amended version of the relevant standards, each containing a new licence number unique to the licensee.

If the Amended Australian Standard AS 2124-1992 is to be used, agencies should have in place an 'Annexures only' licensing arrangement with Standards Australia. For clarity, a 'full text' licensing arrangement is not required when an agency is using AS2124.

Agencies should contact the Office of the Crown Solicitor:

- if it considers it requires an alternate form of contract other than those specified in TI PP-4; or
- it is an organisation that does not have a licensing arrangement in place for use of the Australian Standards specified in TI PP-4.

Where required, OCS will provide relevant details to agencies to enable them to obtain an appropriate Standards Australia licence on terms consistent with those entered into between other agencies and Standards Australia.

For general guidance about Standards Australia licensing arrangements, contact copyright@standards.org.au.

Information technology products and/or services

The Tasmanian Technology Contract Conditions (TTCC) framework must be used when entering into contracts for information technology products and services. Details of and guidance on using the TTCC framework, including template procurement and contract documentation, are available in the Contracts section of the Purchasing website.

Goods and services

The use of forms of contract prepared by the OCS is required for the procurement of goods and services, as outlined in TI PP-3. Templates are available from the Purchasing website.

The OCS has prepared a Goods and Services Template Overview (available on the Purchasing website), which provides guidance to agencies to assist in determining when certain templates should be used.

The OCS has also prepared a Goods and Services Template Guide that provides comprehensive instructions and advice in relation to the use of the OCS good and services contracts. Agencies should refer to that Template Guide when preparing a goods and services contract.

Agencies should contact the OCS (crown.solicitor@justice.tas.gov.au) to request a copy of the Template Guide. Unless approved by the OCS the Template is only available, from OCS, to agencies and entities that are required to comply with the Treasurer's Instructions issued under the *Financial Management Act 2016*.

Specific clause inclusions

Mandatory inclusions

Mandatory clause inclusions are set out in the Treasurer's Instructions. In the majority of cases, relevant clauses are contained in the OCS template document. Where the template

documentation is not used or a required clause is not included (because it may only be applicable in certain cases), advice should be sought from the OCS.

Information in relation to some of the mandatory clause inclusions is set out below.

Dumped goods clauses

Dumped goods are goods from overseas that are imported into Australia at less than their normal value and that may cause injury to an Australian industry producing similar goods, or hinder the establishment of an Australian industry.

Dumped goods, and goods that are suspected of being dumped and are under investigation by the Australian Government's Anti-Dumping Commission, can be identified by referring to the Australian Government Anti-Dumping Commission website.

Professional Standards Act clauses

Under the *Professional Standards Act 2005*, approved occupational associations can limit the professional liability of their members. These limits (a liability cap) will override contract provisions relating to professional liability. Further, where a limitation on liability comes into existence in the future, it will apply retrospectively to contracts signed prior to its existence.

To preserve the integrity of the Crown's position in relation to professional liability requirements in contracts, clauses waiving rights in respect of any future scheme and allowing for a higher level of liability that would otherwise apply (where allowed for under a scheme in force under the Act), should be included in appropriate contracts.

Where the impact is not clear, advice should be sought from the OCS.

Zero tolerance towards violence against any persons in the workplace clauses

The Tasmanian Government has a position of zero tolerance towards violence against women under the Safe Homes, Safe Families, Tasmania's Family Violence Action Plan. Government procurement and contract documents must contain specific clauses supporting the Government's position. These clauses set expectations with respect to the behaviour of contractors providing works and services.

An information sheet for contractors is available on the Purchasing website.

Disclosure and confidentiality clauses

Clauses that set out the Government's position on confidentiality or which allow for publication or disclosure of contract information are required. Clauses that allow for disclosure of contract information will be particularly important where approval has been granted to provide for an alternate approach to the standard non-confidentiality requirements. It will still be necessary for details of the contract and supplier to be published on the Tenders website and in agency annual reports.

Information on confidentiality is contained in Treasurer's Instruction C-1 *Contracts - Disclosure and Confidentiality in Government Contracts* and the associated *Contracts Better Practice Guideline*.

Additional inclusions - general

In addition to the mandatory clause inclusions, the following clauses are often included in OCS templates and where they are not, may be considered for inclusion by agencies, where relevant:

- for building and construction / roads and bridges works procurement, clauses setting out:
    - the requirement to provide a current certified copy of Third Party Quality Assurance (Occupational Health and Safety), or to complete a Workplace Health and Safety (WHS) Contractor Management System Questionnaire, whichever is appropriate;
    - information on the Tasmanian Government's asbestos requirements; and
    - information relating to security of payment and the *Building and Construction Industry Security of Payment Act 2009*.

Further, it is usual that a provision is included in the procurement documentation that tenders or offers remain valid for either 60 or 90 days from the closing time of the procurement.

National Prequalification System for Non-residential Building clauses

For procurement where prequalified suppliers under the National Prequalification System for Non-residential Building are required to be used, the following clauses should be included in the procurement documentation and contract to protect the Crown's position and to ensure that the engagement of the supplier meets the required Tasmanian Government policy requirements:

- Advice that financial capacity assessments should be provided prior to finalising the selection process. In this regard, the preferred contractor should provide information (or any external consultant engaged by the agency in relation to the financial assessment) to enable this assessment to occur in a timely manner. If the financial assessment is not satisfactory, the documentation should reserve a right for the agency to move to the second ranked supplier and undertake a similar financial assessment.
- Advice that performance reports will be prepared during the contract and may be provided to other Tasmanian Government entities as well as to other jurisdictions participating in the NPS. The NPS Guidelines provide that once prequalified, a NPS contractor's details, including its performance on specific contracts, may be shared with other jurisdictions participating in the NPS as well as with other government agencies. The submission of the NPS application authorises any participating agency to gather, monitor and communicate to other participating jurisdictions, information about the contractor's financial position and its performance; and
- Information relating to the applicability of relevant legislation. For example, the *Building and Construction Industry Security of Payment Act 2009*, the *Building Act 2000*, the *Construction Industry (Long Service) Act 1997* and legislation relating to workplace health and safety requirements.

Procurement processes

General

Tendering can be costly for the Government, contractors and suppliers in terms of time, resources and money. Therefore, before commencing the process it is important to have a firm intention to proceed, with funds committed and available. A procurement process should not be used as a means of validating an estimating process.

Re-tendering, where a process has not resulted in expected outcomes, should be avoided unless the specification is substantially amended or a substantial period has elapsed since responses were initially invited. Re-tendering *may* be appropriate where queries put forward by suppliers suggest a major inadequacy in the documentation or where there is significant suspicion or evidence of collusive tendering practices.

Note: The Government has an agreement with the building and construction industry that projects will not be re-tendered within three months of the original tenders having been called.

Period of time allowed to lodge submissions

The time provided for suppliers to submit a response should depend on the nature, value and complexity of the procurement but should be sufficient to enable suppliers to prepare appropriate submissions in response to the market approach.

Suppliers intending to lodge a submission will be required to understand all matters relating to the proposed contract, including on some occasions, inspection of sites and attendance at pre-tender briefings. They may also, for complex procurements, need to form partnerships or consortia with other suppliers in order to fulfil the requirements. All these matters should be factored into determining the appropriate time periods for lodgement of responses.

Dependent on the complexity of the procurement, and any minimum time period requirements for covered procurements (including those outlined in section 7.2 of the *International Procurement Obligations* publication, which specifies mandatory periods for which a covered procurement should remain open), an agency should consider providing:

- 18 days for procurements valued at less than $1 million; and
- 25 days for procurements valued at $1 million or more.

The impact of public holidays and holiday periods, for example Christmas and Easter, should also be taken into consideration in setting dates for procurements and agencies are encouraged to consult with relevant industries if responses may be impacted by the anticipated opening or closing dates.

The designated closing date should not normally be extended once the procurement has commenced. However, if the number of suppliers is likely to be significantly reduced due to an

insufficient period being originally set, consideration should be given to extending the closing date. Generally, agencies should not accept a request by a single supplier for an extension.

Inviting submissions

Quotations / limited submission sourcing and multiple submissions

Copies of the procurement documentation should be sent directly to identified businesses. This may include, for example:

- the current provider;
- businesses that have been identified during the market research phase;
- businesses that have expressed an interest in supplying the good or service; and
- other Tasmanian businesses.

Details of suppliers issued with documentation should be recorded in an appropriate manner. This enables the identification of suppliers should addenda or amendment to the original documentation be required.

Open tendering

In addition to the requirement to publicly advertise or publish open tendering opportunities (refer to the section *Publishing Procurement Notices on the Tenders Website*), copies of the procurement documentation may be issued directly to identified businesses (as above) at the time the procurement is advertised.

The documentation cannot be released prior to the publication of the opportunity on the Tenders website.

Briefings

Briefing meetings (held during the procurement period) may be called for important contracts. Where this is to occur, the procurement documentation should provide details of the meetings.

The objective of the briefing is to clarify any uncertainties that suppliers may have relating to the procurement or the documents. The information given at the briefing should refer to the procurement documents and must not be in conflict with or additional to them. All questions from suppliers for clarification of any aspect of the procurement or documents are to be formally recorded at the briefing and made available to all present. Questions should be answered by referring to relevant clauses in the documentation.

All briefings should be documented. The minutes of the briefing should be forwarded to all suppliers who have received or downloaded the procurement documentation (regardless of whether they have attended the briefing or not) and should become a part of the procurement documentation. Questions that cannot be answered at the briefing should be taken on notice. All suppliers should be given written answers to the questions and a full written record of the briefing should be made available prior to closing the procurement (at least one week is suggested). The distribution should include agency nominated subcontractors (if any), whether or not they were present at the site inspection or briefing. Any alterations, deletions or additions to the

procurement documents found necessary as a result of the briefing are to be advised separately by the issue of an addendum.

The briefing is to be conducted in such a way that no supplier is disadvantaged against any other.

All parties at the briefing should be required to provide their name, organisation and signature on an attendance sheet.

Similar processes should be adopted for site inspections.

Clarification of procurement documents

Suppliers may ask for clarification of information in procurement documents. However, agencies cannot give information to any supplier that is also not promptly conveyed to all other tenderers.

All enquiries should be recorded by the Contact Officer, noting time and date of receipt and the issue discussed. Where possible, it is advisable to request that questions be put in writing (email or facsimile will suffice). Responses should be provided in the same manner. Information provided should be limited to clarification of procedural issues or documentation and questions that are covered by the documents should be answered by reference to the relevant clauses. Only when further clarification is necessary should any explanation be given. Any explanation is to be promptly given by way of an addendum to all suppliers.

Where significant errors, ambiguities or discrepancies are revealed, the information provided should be promptly conveyed, by addendum, to all suppliers.

Issuing addenda

After procurement documentation has been issued, amendments to the procurement documents could include:

- the correction of errors or conflicts in the documents that may affect interpretation;
- amendments to the extent and nature of the work (ie the specifications); and
- amendments to protect the Crown's interest in the subsequent administration of the contract.

When issuing addenda it is important to identify all potential suppliers who may have been issued with the documentation. Where documentation has been issued via the Tenders website, information on suppliers who have downloaded the documentation from the website can be obtained from the Treasury Tenders System Administrator by phone on 03 6145 5888 or by email to tenders@treasury.tas.gov.au.

Each addendum issued should:

- state that it will be incorporated in the procurement documents;
- be numbered or otherwise readily identifiable; and
- precisely define and describe the alterations, additions or deletions required, with reference to the appropriate elements in the original documents.

Where an addendum is to be issued for documents that include a Schedule of Rates, it should also detail the necessary quantity or description changes.

For design and construction procurement, where an addendum results in a substantial change and is issued with less than three to four weeks remaining to the closing date for submissions, an extension should be provided. A 'substantial change' means a change that would require the supplier to re-work their submission or pricing. For other procurements:

- where an addendum results in a substantial change and is issued with less than five working days remaining to the closing date, agencies should consider an extension to the closing date; and
- agencies should consider extending the closing date for submissions where it would be fair and equitable to do so and where a failure to do so may result in fewer responses or significant inconvenience to suppliers. Information on any extension of the closing date and time for the procurement should be included in the addendum and the Open for Bids notice should be amended on the Tenders website. Advice should be sought from the Treasury Tenders System Administrator, as above.

All potential suppliers should be requested to confirm receipt of the addenda in their submission. When responses are received, agencies should check that has occurred.

Receipt and opening of submissions

The process for opening of submissions is a matter for the agency. However, it is recommended that:

- more than one person be present for the opening of submissions;
- details of the submissions received should be recorded;
- advice from suppliers who have declined to submit a quote or tender (where specifically approached for a response) should be documented; and
- all responses received be marked with the time and date of receipt and recorded in an appropriate schedule or register.

A tender box opening example template is available on the Purchasing website, as an annex to this document.

When opening an electronic "tender box" such as the lodgement facility on the Tenders website, the steps set out in the *Tenders Website Agency User Manuals* (only available from the Tenders website with an agency login) should be followed.

Agencies should ensure that documents are securely stored for the remainder of the process.

It is good practice to advise suppliers that their submission has been received.

Facilities for lodgement of submissions (including electronic options)

The facilities used for lodgement of submissions is a matter for the agency to determine, ensuring all requirements in relation to handling and confidentiality can be met.

At least one electronic submission option is required by the Treasurer's Instructions. Electronic options may include the use of the Tenders website electronic lodgement functionality or a secure email address. When the Tenders website has been used to advertise a procurement process, the Tenders website electronic lodgement functionality is generally the preferred electronic option. However, this is a matter for the agency to consider based on the procurement itself.

Where email is used:

- the facility should be secure;
- access to the submissions should be controllable to prevent compromising security of responses and to protect confidentiality; and
- access should be auditable and documented.

It should not be possible for anyone other than the supplier to know the details of the offer before the procurement is closed.

Late submissions

The treatment of late tenders should be considered by the evaluation committee at the planning stage, documented in a procurement plan (if used) and in the procurement documentation.

Evaluating submissions

Alternative offers

An alternative offer is a response to a request for quote or tender that proposes a different means or way of meeting the agency's requirements than that specified in the procurement documentation. Alternative offers may sometimes be allowed by an agency to ensure the most effective solution is identified and encourage innovation. If allowing alternative offers is being considered, agencies should consult with the OCS.

Evaluation process

The following indicates the usual steps in the evaluation process.

Preliminary assessment of responses

An assessment of all submissions to determine whether they are compliant. A compliant tender is one that meets the conditions of the procurement and complies with all mandatory requirements or conditions for participation.

For building and construction, the assessment may include a review of the schedules required to be submitted to determine whether they are in conformity with the tender documents.

Seeking clarification

It may be necessary to seek clarification from a supplier if a submission is unclear or contradictory. However, allowing a supplier to provide clarification does not mean that suppliers can revise their original submission. Any clarification sought and the response should be fully documented.

Suppliers should not be made aware of an agency's estimate or other supplier's prices during any stage of the evaluation phase.

Shortlisting submissions

This step is not necessary for many purchases. It is sometimes useful for complex purchases, to eliminate offers that are clearly not competitive and will not provide value for money when compared to the other offers[3]. Unlike when eliminating for non-compliance, these eliminated offers are not totally rejected, and may be revisited later in the evaluation process.

In order to shortlist submissions, the criteria used must be applied fairly and equitably to all offers. Reservation of the agency's right to shortlist should be included in the procurement documentation. Shortlisting should be fully documented.

Request formal presentations

If appropriate, and suppliers have been advised that this may occur in the procurement documentation, suppliers may be requested to make a formal presentation to the evaluation committee. The supplier should not introduce new or revised information during presentations, and all questions and answers should be formally recorded.

Evaluate criteria

This stage involves a detailed analysis of each offer against the evaluation criteria and weightings specified in the procurement documentation for those submissions that remain after the elimination of non-compliant responses.

It is useful to use an evaluation matrix to compare scores against each of the non-cost or qualitative evaluation criteria for each compliant submission. In assessing a response it is important to remember that suppliers should *demonstrate* that they meet the evaluation criteria - not just *assert* it. Example matrices are available on the Purchasing website in the Annexes to this document.

For submissions that include a schedule of rates, the calculations relating to all rates and extended amounts submitted by suppliers should be checked for accuracy. Changes to rates or prices should not occur. However, if there are errors in calculations, these may be corrected and a revised total amount calculated and shown. The revised total should be used in the review and the supplier advised.

When obtaining referee reports the information should be used for clarification purposes only, not as the basis for a new judgment. All discussions with referees should be documented in full.

For building and construction / roads and bridges projects, where there is a considerable variation between the project estimate and the prices submitted by suppliers, the matter may need to be referred to the quantity estimator for advice.

[3] This is a different process to the shortlisting used in selective tendering processes such as an EOI or a RFP.

Comparative evaluation

Using the results from the evaluation of criteria, a comparative analysis can be undertaken.

Write the evaluation report

On completion of the evaluation process, the selection should be documented in an evaluation report. All members of the Evaluation Committee should sign the report. The report should include a comprehensive record of the evaluation method and the rationale used to select the preferred supplier.

The format and content of the evaluation report is dependent upon the complexity and nature of the purchase. An example of an evaluation report template can be located on the Purchasing website.

If there has been a long delay in evaluation (for example, beyond the period of validity set out in the procurement documentation), the recommended supplier should be asked to confirm that their offer still stands. If the offer no longer stands then the supplier should be asked to formally withdraw their offer.

Withdrawal of an offer

If an offer is withdrawn, there must be a clear and unequivocal statement that it has been withdrawn. The statement of withdrawal should be in writing from the supplier.

If, during the evaluation, an offer is withdrawn or revoked at any time prior to acceptance, then the evaluation should be recalculated with all scores and calculations attributed to the withdrawn offer removed.

Financial assessments of prequalified suppliers

Agencies should ensure that a contractor remains financially viable prior to awarding a contract by undertaking a review prior to the award of contract, because prequalification may have occurred years before the proposed engagement of the supplier. This recommendation applies to the Treasury Prequalification Scheme and the National Prequalification System for Non-residential Building (NPS).

Awarding contracts

Contract formation

Following approval of the procurement by an agency's Procurement Review Committee (where necessary) and approval of the recommendation to appoint the preferred supplier, agencies may advise the supplier of their success. Depending on the complexity, value, type of good or service being purchased and the process adopted, a contract may be formed by:

- issuing a letter of acceptance;
- issuing a purchase order; or
- using a more formal agreement, including specified Conditions of Contract.

Where a letter of acceptance is used, the letter should:

- include appropriate identifying information, for example a contract number, file number, contract title;
- refer to the original offer submitted by the supplier;
- include any necessary obligations arising from the supplier's Economic and Social Benefits Statement or Tasmanian Industry Participation Plan;
- list any post-offer correspondence that forms part of the contract, for example conditions relevant to the submission or specification requirements; and
- name a contact or contract management officer.

Due diligence

Due diligence occurs during the contract negotiation stage and allows both parties to test their expectations and understanding of the contract requirements and resolve any misunderstandings. This step would usually only be required for complex, non-routine or large contacts.

Contract negotiations with the preferred supplier

For complex or high value purchases, it may be necessary to enter into negotiations prior to finalising the contract. The OCS may need to be involved, especially where changes to the OCS template contracts are requested. Suppliers should be advised in procurement documentation of the possibility of negotiations to settle contract terms with the preferred supplier.

Where negotiations are undertaken with the preferred supplier on the contract, the negotiation process and outcomes should be clearly documented and reflected in the eventual contract.

Verifying a contractor's legal status

When submitting an offer, some contractors may use a name, for example a business name, which is not the name of a legal entity. Care should be taken to ensure that contracts are awarded only to recognised legal entities. The trading name or registered business name of a business should only be used to help eliminate duplication and for cross-referencing purposes. A trading or registered business name should not be used as the sole means of identifying the principal(s) of a business for contract purposes.

Advising unsuccessful suppliers and debriefing

As well as providing the name and the total value of the successful offer, advice to unsuccessful suppliers should also include an offer to debrief, along with details of an appropriate contact officer.

Where a multi-staged purchasing process is used, for example where an EOI is used to short-list suppliers, it is best practice for those not short-listed or placed on a multi-use list to be advised that they have been unsuccessful and to be offered a debrief.

Debriefing

The objective of the debriefing session is to help unsuccessful suppliers submit more competitive bids going forward. The debrief should examine areas of non-compliance and areas for improvement.

The team conducting the debriefing interview should include at least two people and at least one of these should be a member of the evaluation committee. Prior to the debriefing interview, the debriefing team should familiarise itself with the offer and the reason the supplier was not successful. It should also identify the strengths and weaknesses of the offer.

The debriefing interview is an opportunity for suppliers to learn how to improve their offer preparation skills. The debriefing interview should not be used to justify the selection of the successful supplier. Discussion at the debriefing should be limited to the supplier's offer only and how the offer performed with respect to the evaluation criteria. Discussion could include a summary of the strengths and weaknesses of the offer.

The unsuccessful supplier's offer should not be compared to the winning offer and neither should aspects of the winning offer or any other offer be discussed. In relation to building and construction / roads and bridges, as the debriefing interview is usually held with the main contractor, other parties such as sub-contractors who have assisted with the preparation of the tender do not attend. Therefore, to improve the effectiveness of competition at the sub-contract level, agencies should encourage the main contractor to pass on to their sub-contractors any briefing information relevant to their component of the tender.

Examples of issues that may be discussed at the debriefing include:

- cost - an indication of competitiveness;
- specification and evaluation criteria - levels of compliance;
- offer and contractual issues;
- design - for example any design deficiencies that would lead to higher operating costs;
- after-sales service - for example inadequate servicing network, spares held;
- industrial relations - for example a poor record with no plans for improvement;
- administrative, management and quality management systems- ineffective control methods, systems, people, training;
- experience, qualifications and referee reports or past performance - for example inadequate experience or qualifications, or poor performance on previous contracts;
- personnel - for example number, experience or quality of management and other personnel;
- facilities and equipment - for example outdated, inefficient equipment or facilities; and
- sub-contracting - for example inadequate control mechanisms.

The proceedings of the debriefing interview should be fully documented. Notes of the debriefing interview should be taken simultaneously with the interview. The information to be recorded should include:

- names and positions of participants;
- information provided to the unsuccessful supplier and any issues arising;

- details of any requested information that was not disclosed due to commercial-in-confidence considerations; and
- any likely future complaints and recommendations for further action.

An example Record of Debriefing template is available on the Purchasing website in an Annex to this document.

Contract Extensions - goods and services

Treasurer's Instruction PP-6 *Procurement Processes - Contract Extensions: Goods and Services* applies.

Before considering a contract extension:

- the supplier's performance should be reviewed to ensure an agency is satisfied with the supplier's performance in terms of delivering the agency's requirements;
- an agency should consider whether there has been any substantial change to the market or the nature of the goods or services since the previous procurement; and
- the underlying principles of open and effective competition and transparency in government purchasing should be taken into consideration.

Extensions under the terms of the original contract

Extensions of contract, pursuant to the terms of an option to extend, should be approved by the appropriate officer within each agency.

Extensions pursuant to Treasurer's Instructions

The principal intent of an extension in this instance is to enable a short-term contract extension solution for agencies that encounter exceptional circumstances. For example, an extension may be required due to:

- unanticipated legal issues identified during the planning phase of a procurement, resulting in a delay to the request for tender being advertised;
- unavoidable delays in the finalisation of a new contract following a tender process; or
- other unforeseen circumstances or decision-making requirements that have delayed the procurement.

Poor planning would generally be considered insufficient justification to extend a contract outside the terms of the original contract.

In instances where the requirements for approval are unable to be met, including where international procurement obligations apply, potential extensions should be treated as a new contract and either a full procurement process undertaken or consideration given to whether limited tendering can be approved.

Processes

Each Accountable Authority should establish internal processes for seeking approval of extensions. For example, an Accountable Authority may wish to have requests reviewed by the agency Procurement Review Committee prior to a decision. The Accountable Authority may also wish to include approvals in the agency's internal audit program.

Reporting

Tenders website

Contract extensions valued at $50 000 or more approved pursuant to the Treasurer's Instruction PP-6 *Contract Extensions: Goods and Services* are to be reported on the Tenders website. However, contracts extended in accordance with an option to extend in the original contract are not required to be reported, as these will already have been encompassed in the original notice.

Agency annual reports

Details of all contract extensions approved pursuant to the Treasurer's Instruction PP-6 *Contract Extensions: Goods and Services* are to be reported in the agency annual report. Contracts extended in accordance with an option to extend in the original contract are not required to be reported, as the reporting of the original contract will already have encompassed these.

Annexes

The following annexes to this Better Practice Guideline are available on the Purchasing website under *Buying for Government > Purchasing Framework > Better Practice Guidelines*.

- Annex A - Statement of Work form
- Annex B - Tender Box opening form template
- Annex C - Evaluation Matrix example
- Annex D - Weighted Evaluation Matrix example
- Annex E - Evaluation Scoring Matrix example
- Annex F - Record of debriefing example

FMA

Financial Management Act 2016

Procurement

Better Practice Guidelines (Accountability and Reporting)

Department of Treasury and Finance

Tasmanian Government

Title: Procurement Better Practice Guidelines (Accountability and Reporting)

ISBN 978-1-922379-65-8 (Online)
ISBN 978-1-922379-70-2 (Hardcopy)
First published July 2019
This version December 2021

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Contents

Introduction

The *Financial Management Act 2016* provides for the management of the public finances of Tasmania in an economical, efficient and effective manner consistent with contemporary accounting standards and financial practices.

Treasurer's Instructions are issued under section 51 of the *Financial Management Act 2016* in respect of the principles, practices and procedures to be observed in the financial management of all agencies.

Better Practice Guidelines are intended to assist Accountable Authorities and responsible officers with their financial management responsibilities, in the area of procurement. The Guidelines should be read in conjunction with the Instructions.

This *Better Practice Guideline* provides information to assist in understanding Treasurer's Instruction PF-5, which sets out the procedures to be established and processes to be adopted in relation to accountability and reporting with respect to procurement activities.

Further information, forms, templates, checklists and publications are available from www.purchasing.tas.gov.au (the Purchasing website) and www.tenders.tas.gov.au (the Tenders website). All queries in relation to the Treasurer's Instructions, this document and the website contents should be directed to purchasing@treasury.tas.gov.au (unless otherwise specified).

International Procurement Obligations

Tasmanian Government agencies are required to comply with procurement obligations set out in a number of international agreements. The *International Procurement Obligations* publication, available on the Purchasing website, sets out the mandatory requirements that relate to procurements covered by the international agreements. Please note that the *International Procurement Obligations* should be read in conjunction with the Treasurer's Instructions and *Better Practice Guidelines*, as they impose additional requirements agencies need to be aware of when undertaking covered procurements.

Accountability and reporting

Reporting awarded contracts

Treasurer's Instruction PF-5 *Procurement Framework - Accountability and Reporting* (clause 5.9 - 5.11) applies.

To report contract information, agencies should be registered to use the Tenders website. Contracts are reported under the 'Contracts Awarded' section on the website.

Once the notice information is entered into the Tenders website and submitted, the Department of Treasury and Finance will publish the notice as soon as practical after completion of associated internal requirements.

Information on notice requirements is available from the *Agency User Manual – Tasmanian Government Online* (only available from the Tenders website with an agency login). The Tenders System Analyst is also available to provide advice, guidance, training and additional information and may be contacted on phone 03 6145 5888 or by email at tenders@treasury.tas.gov.au.

Recording Conflicts of Interest

Treasurer's Instruction PF-5 *Procurement Framework - Accountability and Reporting* (clause 5.1) applies.

Information to assist agencies to establish a suitable process to record conflicts of interest is contained in the publication *Recording and Managing Conflicts of Interest - Guidelines for Agencies* (available on the Purchasing website).

Complaints

Treasurer's Instruction PF-5 *Procurement Framework - Accountability and Reporting* (clauses 5.2 - 5.3) applies.

Handling complaints

All complaints whether in writing or verbal should be dealt with through a formal complaints process and handled free of charge to the complainant. Confidentiality should be maintained at all times. Regular feedback should be provided to the complainant. Where a written complaint is received and the procurement is a 'covered procurement[1]', the agency complaints officer should immediately review the complaint to determine whether it is a complaint under the *Government Procurement Review (International Free Trade Agreements) Act 2019*.

If the Act applies, the complaints process must comply with the legislative requirements. Refer to the *Complaints Handling: Covered Procurements* publication (available on the Purchasing website) for

[1] Refer Treasurer's Instruction PF-2 *Procurement Framework - Policies impacting on procurement: all procurement (clause 2.3)*

further information. In all other cases, the complaint should be dealt with in accordance with the agency general complaints procedure.

Agency general complaints procedure

Agencies are responsible for developing and managing their own internal complaints procedures. Agencies should readily make available details of this procedure to relevant officers, suppliers, and potential complainants. To assist with this process, it is recommended that agencies develop an appropriate reporting template, which complainants can use to formally submit a complaint.

Agency complaints officers

Agency complaints officers should:

- have a good understanding of government procurement policies and processes;
- have access to all levels of staff in an agency, as necessary, to investigate and resolve a complaint; and
- operate independently of an agency's purchasing area to reduce the risk of conflicts.

Accountable Authorities should consider using a probity adviser or the agency Procurement Review Committee to assist in the complaints process if the complaints officer has been involved in the procurement process the subject of the complaint.

Escalation of complaints to Treasury

Where a complainant escalates a matter to the Department of Treasury and Finance, the agency concerned should provide copies of all correspondence with the complainant, together with any other relevant material to Treasury. Treasury will take action it considers necessary to resolve the complaint. This may include engaging a probity adviser.

Note: Treasury does not have a formal role in dealing with covered procurement complaints. Covered procurement complaints are to be dealt with by the agency and the Supreme Court of Tasmania.

Record keeping

Any documentation relevant to complaints (written and oral) should be retained for future reference in a secure place and information recorded in an agency's complaints database should include sufficient information to identify the complaint, the outcome of the complaint and the time taken to resolve the matter. For example:

- the date the complaint was made;
- the complainant's details;
- a brief description of the complaint;
- the action taken including dates of each action;
- the outcome of the complaint including whether it was resolved or referred onwards to further review; and
- the response time.

Reporting complaints to Treasury

Complaints information, including information relating to covered procurement complaints, should be submitted to Treasury via purchasing@treasury.tas.gov.au. If an agency received no complaints during a financial year, a nil return should be advised. A complaints report example is available on the Purchasing website, further details are in the Annexes.

Procurement Review Committees

Treasurer's Instruction PF-5 *Procurement Framework - Accountability and Reporting* (clauses 5.4 - 5.6) applies.

Membership

The membership of an agency's Procurement Review Committee may vary depending on the agency's requirements. In establishing the committee, preference should be given to officers that have appropriate qualifications, knowledge, skills or experience to enable the Committee to perform its role.

Agencies may wish to increase the membership pool by having members listed on a panel. This will allow for appropriate resourcing in circumstances where a member is absent or where a member may be involved in a procurement.

Undertaking the Committee role

In order to fulfil its obligations under the Treasurer's Instructions, the Committee might consider the following:

- whether a fair and equitable process has been followed and whether the process is appropriate and would withstand external scrutiny;
- any requirements of the Treasurer's Instructions or the *International Procurement Obligations* publication;
- an appropriate level of compliance with best practice guidance material that is available and applicable, including Procurement Practice Manuals;
- whether the submissions were evaluated against the criteria set out in the procurement documentation;
- whether the description of the evaluation in the evaluation report provides sufficient information for third parties to reach the same conclusion as the evaluation committee;
- whether the comparative assessment description in the valuation report matches the score and is consistent between suppliers;
- whether any agency required procurement process checklist has been satisfactorily completed;
- whether the appropriate checks were undertaken to ensure that the recommended supplier is an acceptable legal entity, is viable, and has the experience/ability required;
- in relation to building and construction or roads and bridges procurement, conformity with:

  - applicable building and construction or road and bridges documents including site reports, geotechnical reports and addenda; and
  - prequalification requirements; and
- any other matters the Committee considers appropriate in the exercise of its responsibilities or as set out it its terms of reference or charter.

To do this the Committee will generally need to view the following:

- information relevant to the procurement and evaluation process adopted;
- the final evaluation report;
- the probity adviser's report (where obtained); and
- information from the officer responsible for managing the procurement process, verifying conformity with relevant policies and guidelines.

If a standard process has not been undertaken, evidence of necessary approvals for an alternative process should also be sighted. A Committee may choose to require completion of checklists confirming compliance with procurement requirements.

A copy of the Committee's endorsement should be provided, with the evaluation report, to the person who is responsible for approving the awarding of any subsequent contracts.

Relevant Guidelines and Documents

Documents and publications that may be of assistance to the Committee include:

- *International Procurement Obligations*;
- *Procurement Practice Manual - Best Practice for the Engagement of Consultants*; and
- *Guidelines for Tender Evaluation using Weighted Criteria for Building Works and Services*.

The above documents are available on the Purchasing website. Example template Committee checklists are available on the Purchasing website, further details are in the Annexures.

Restrictions on and extensions to the role of the Committee

The role of the Committee may be extended by the Accountable Authority beyond the mandatory requirements to other matters such as:

- review of limited tendering (direct sourcing) procurement;
- contract extensions pursuant to the Treasurer's Instructions;
- review of procurement below the mandated threshold levels;
- approval of the procurement process to be adopted for complex high cost or high risk procurements;
- review of procurement documentation or other procurement processes within the agency; and
- preparing recommendations in relation to Accountable Authority approvals or exemptions.

The Committee may also be a focus of procurement data collection within an agency, for example, information on awarded contacts can be collected from the information that is submitted to the Committee and included in the Agency's Annual Report.

Internal Audit

Internal auditing requirements are contained in Treasurer's Instruction FC-2 *Internal Audit* and the associated *Financial Management - Better Practice Guidelines*. These are available on the Treasury website (www.treasury.tas.gov.au). Refer also to the section on low value procurements below.

Annual Reporting

Annual reporting requirements are contained in Treasurer's Instruction FR-4 *Annual Reports* and the associated *Financial Management - Better Practice Guidelines*. These are available on the Treasury website (www.treasury.tas.gov.au).

Low value procurements

It is important that procurement processes are conducted in an ethical manner and decisions are able to withstand public scrutiny - this is especially so for low value procurement processes where there is not as much formality in the processes required. To this end, agencies should consider adopting the following practices for low value procurement:

- A formal pre-procurement approval process for all procurements, including low value procurements with the detail to be provided to the authorising officer to be determined proportionate to the value of, and risk relating to, the procurement;
- Where finance, record or contract management systems allow, a process for periodic review of contracts to detect inappropriate contract splitting or identify frequently used suppliers or, as an alternative to a systems review, internal agency reporting to an appropriate officer or body of agency low value contracts;
- Inclusion of a random sample of low value procurements in the agency's formal internal audit process; and
- A review of financial and procurement delegations to ensure that there is proper oversight of low value procurements including consideration as to whether those with authority to approve procurements should be restricted from approving subsequent payments - thus providing a second person check on those processes.

Annexes

The following annexures to this Better Practice Guideline are available on the Purchasing website under *Buying for Government > Purchasing Framework > Better Practice Guidelines*.

- Annex A - Complaints report example
- Annex B - Procurement Review Committee submission template
- Annex C - Procurement Review Committee checklist example

FMA

Financial Management Act 2016

Disposals

Better Practice Guidelines

Department of Treasury and Finance

Tasmanian Government

Title: Disposals Better Practice Guidelines

ISBN 978-1-922379-66-5 (Online)
ISBN 978-1-922379-71-9 (Hardcopy)

First published July 2019
This version December 2021

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Better Practice Guidelines are intended to assist Accountable Authorities and responsible officers with their financial management responsibilities, including disposal of Crown assets. These Guidelines should be read in conjunction with the Treasurer's Instructions.

This *Better Practice Guideline* provides information to assist in understanding Treasurer's Instruction D-1, which sets out the principles and policies that apply when disposing of Crown assets.

International Procurement Obligations

Tasmanian Government agencies are required to comply with procurement obligations set out in a number of international agreements. The *International Procurement Obligations* publication, available on the Purchasing website, sets out the mandatory requirements that relate to procurements covered by the international agreements. Please note that the *International Procurement Obligations* should be read in conjunction with the Treasurer's Instructions and *Better Practice Guidelines*, as they impose additional requirements agencies need to be aware of when undertaking covered procurements.

Disposals

Disposal of assets generally

Treasurer's Instruction D-1 *Disposals* applies.

Individual agencies are generally responsible for their own disposals. There are some exceptions, such as motor vehicles managed by the Government's Fleet Manager and real property.

Information on requirements for Strategic Asset management and access to sale proceeds is available in Treasurer's Instruction B-1 *Budget Management* and the associated *Better Practice Guidelines*.

Disposal decisions in all cases should be able to withstand public scrutiny.

Disposal of surplus real property

Other than as set out in Treasurer's Instruction D-1, clauses 1.4 and 1.5, agencies should refer disposals of surplus real property to the Department of Treasury and Finance.

Disposal of non-real property assets

Motor Vehicles not managed by the Government's Fleet Manager

When undertaking disposal of motor vehicles not managed by the Government's Fleet Manager, it is recommended that consultation with the Government's Fleet Manager on a suitable disposal method be undertaken.

Non-real property assets with an estimated disposal value of more than $10 000

If a disposal method other than the standard methods set out in Treasurer's Instruction D-1, clause 1.11, would result in disposal at a price lower than the market value, the disposal is considered a grant. In effect, it provides assistance by way of a resource to an organisation or individual. In such circumstances, the disposal process must be consistent with Treasurer's Instruction FC-12 *Grant Management*.

Disposal of other assets

Material of state significance is to be dealt with in accordance with the requirements of section 16 of the *Tasmanian Museum and Art Gallery Act 2017*. Information on this requirement, a definition of Agency and Head of Agency for the purposes of that legislation, and how the Tasmanian Museum and Art Gallery Board will deal with notices, is set out in that Act.

Disposal of material from the collections of the Tasmanian Museum and Art Gallery is to be undertaken in accordance with the requirements set out in the *Tasmanian Museum and Art Gallery Act 2017*.

FMA

Financial Management Act 2016

Contracts

Better Practice Guidelines

Department of Treasury and Finance

Tasmanian Government

Title: Contracts Better Practice Guidelines

ISBN: 978-1-922379-51-1 (PDF)
First published July 2019
This version published August 2021

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Better Practice Guidelines are intended to assist Accountable Authorities and responsible officers with their financial management responsibilities related to contracts. The Guidelines should be read in conjunction with the Treasurer's Instructions.

This *Better Practice Guideline* provides information to assist in understanding Treasurer's Instructions C-1 and C-2, which set out the principles that apply to the management of major accommodation leases, and disclosure and confidentiality in relation to government contracting.

International Procurement Obligations

Tasmanian Government agencies are required to comply with procurement obligations set out in a number of international agreements. The *International Procurement Obligations* publication, available on the Purchasing website, sets out the mandatory requirements that relate to procurements covered by the international agreements. Please note that the *International Procurement Obligations* should be read in conjunction with the Treasurer's Instructions and *Better Practice Guidelines*, as they impose additional requirements agencies need to be aware of when undertaking covered procurements.

Confidentiality Policy - all contracts

General

Treasurer's Instruction C-1 *Contracts - Disclosure and Confidentiality in Government Contracting* applies.

The Tasmanian Government is committed to ensuring that government contracting is conducted in an open and transparent manner and that its contracts do not contain confidentiality provisions that might prevent public scrutiny.

Treasurer's Instruction C-1 sets out the Government's policy in relation to confidentiality in Government contracts. The policy provides that contracts between the Crown and another party must not contain a confidentiality provision unless the Accountable Authority has granted approval. It also requires agencies to make high value contracts publicly available.

The policy extends to all contracts, unless specifically excluded by Treasurer's Instruction C-1. The policy is ***NOT*** restricted to contracts arising from procurements.

Prohibition on confidentiality provisions

The prohibition of the inclusion of confidentiality provisions applies to the terms and conditions of a contract itself (including annexures or schedules). It does not apply to:

- pre–contract information which passes between the parties in order to enable a contract to be performed; or
- the services or products that flow from the performance of a contract, including information that is brought into existence under the contract.

Except where the inclusion of a confidentiality provision is approved, all contracts should state that the terms and conditions of the contract are not confidential and that either party may publish or otherwise disclose any part or parts of the contents of the contract without reference to any other party. The Office of the Crown Solicitor (OCS) is able to provide advice on suitable wording.

Approval of confidentiality provisions

Treasurer's Instruction C-1 *Contracts - Disclosure and Confidentiality in Government Contracting* applies.

Approval and post-approval processes

Generally, applications for approval should be dealt with on a case-by-case basis. However, where appropriate circumstances exist and those circumstances may arise on a regular basis during the course of an agency's normal business, approval of confidentiality for a class of contracts is permitted.

Approval by the Accountable Authority is required prior to the inclusion of the confidentiality provision in a contract or any variation to a contract.

Agencies are responsible for determining how they structure internal processes to manage requests for confidentiality.

The Accountable Authority, in their absolute discretion, may decide to approve all or part of an application. Where a confidentiality provision is to be included:

- the contract should be drafted to give effect to the decision;
- a limit on the period of confidentiality should be imposed where it is considered practical to do so; and
- advice on appropriate contract drafting should be obtained from the OCS.

It is recommended that agencies consider including compliance with the requirements of the Government's confidentiality policy in the agency's internal audit program.

Note: Information relevant to requests may be disclosed when required by law, for example under the *Right to Information Act 2009*.

Commercial sensitivity of information

Commercially sensitive information:

- is information that if disclosed publicly, may undermine or unfairly prejudice the competitive position, commercial or economic interests of the supplier; and
- may include trade secrets, commercial production methods, or information that concerns the financial affairs of the supplier.

Generic information, information publicly available or information that is common knowledge would not be considered commercially sensitive.

Pricing information may meet the commercial sensitivity test, but generally only where profit margins, pricing or cost structures, rebates or guarantees would be revealed and revealing this information would result in prejudice or undermining of the commercial position or interests of the supplier. A supplier simply not wanting their competitors to know the price tendered is generally not sufficient.

Commercial sensitivity of information should be asserted and objectively demonstrated by the supplier. The information should be specifically identified, so it is capable of being redacted from the contract. A request for the entirety of a contract to be considered confidential would rarely meet commercial sensitivity requirements.

Unreasonable detriment

Given the extent of contracts covered by the Government's policy, the risk of damage or detriment is not necessarily limited to damage or detriment to commercial interests, although for commercial contracts this will often be the case.

Either the supplier or the Crown can assert that the release of specified information contained in the contract would cause unreasonable detriment to it or to another party. In order to show unreasonable detriment, the relevant party should be required to objectively demonstrate a real risk of damage or detriment.

Rejected applications

If a request for confidentiality is rejected by the Accountable Authority, or approved but in terms not acceptable to the proposed supplier, the supplier may either waive their confidentiality requirements or withdraw from the negotiations.

Reporting on contracts with approved confidentiality provisions

Treasurer's Instruction C-1 *Contracts - Disclosure and Confidentiality in Government Contracting*, clause 1.5, applies.

It is a matter for an agency to determine what information relating to approvals is included on their website. However, it should include sufficient information for the contract to be clearly identified. For example:

- the names of the parties; and
- the date of approval of confidentiality, including information that indicates that the approval was a class approval if relevant.

Information on annual reporting is contained in Treasurer's Instruction FR-4 *Annual Reports*.

Publishing or providing access to high value contracts

The second limb of the Government's confidentiality policy requires agencies to report on, and make publicly available, high value contracts. A high value contract is a contract valued at more than $2 million. Generally, these will be required to be published either on the agency website (non-procurement contracts) or on the Tenders website (contracts arising from a procurement process).

Non-procurement contracts that are otherwise publicly available, such as leases registered against title at the Lands Titles Office, do not need to be published.

Valuing a contract

When determining whether a contract is valued at more than $2 million, the value of all potential extensions should be taken into account. Where multiple contracts arise from one activity, the value of all such contracts should be taken into account. In both cases, GST should not be taken into consideration when determining the value.

Publication relating to contracts arising from a procurement (Tenders website)

For contracts arising from a procurement process (other than purchase orders), the identifying information will be the Awarded Contract Notice (required by Treasurer's Instruction PF-5 *Procurement Framework - Accountability and Reporting*).

The contract is to be uploaded to the website and attached to that notice or where it is impracticable to do so, contact details of an officer who can provide access to the document provided instead.

When publication of a contract is to occur it should be uploaded in a format that is readily accessible such as Microsoft Word (.doc or .docx) or Adobe PDF (.pdf) format. The signatures of parties should be removed and the date of execution and the names of the executing parties be typed or handwritten into the relevant sections of the contract. For example:

[signed <first name> <surname>]

[15 February 2019]

The entirety of the contract, including all annexures, is to be uploaded. However, where a confidentiality provision has been approved, the confidential information under that provision can be removed from the document before it is published. If there is a time limit on the confidentiality, the date when the confidential information will be available should be inserted in place of the removed information. For example:

Confidential until [12.00am on 31 March 2023]

Purchase orders (including orders arising from a panel arrangement)

For purchase orders valued at more than $2 million, a copy of the applicable purchase order, with approved confidentiality provisions removed, or relevant contract information should be provided in electronic form, via email to the Tenders System Administrator, for publication on the Tenders website. Sufficient information to identify the contracts should also be provided such as:

- the parties to the contract;
- the name, or a description, of the contract;
- the date that the contract was awarded; and
- the term of the contract, (where applicable) including whether any options to extend are included.

The Tenders System Administrator can be contacted by phone on 03 6145 5888 or by email at tenders@treasury.tas.gov.au.

Publication relating to non-procurement contracts

For all other contracts, the information to be published on the agency website should be sufficient to clearly identify the contract and may include:

- the parties to the contract;
- the name or a description of the contract;
- the commencement date of the contract or date that the contract was awarded or signed; and
- the term of the contract, (where applicable) including whether any options to extend are included.

A link to the contract or agency contact details for access to the contract, or both, should be provided. Where the contract is to be published, it is recommended that the same format and redacted information recommendations as above be applied.

When publication is not practical

Publication of a contract may not be practical in some cases. For example, where the contract contains large diagrams or plans. In such circumstances and where physical access to a contract is requested, agencies can either provide copies of documents or provide for physical inspection of the documents at the agency's offices, as appropriate.

Confidential information should be removed prior to access being provided.

Contracts valued at less than $2 million

While the Treasurer's Instructions only require contracts valued at over $2 million to be published or made available, agencies are reminded that contracts valued at or under $2 million may also be required to be made publicly available through normal processes under the *Right to Information Act 2009*.

Frequently asked questions

What information needs to be included in a contract - what may be made publicly available?

All information, to the extent that it is necessary to create the required binding obligations, must be included in a contract. For example, pricing will be an important and necessary component of a contract and in some cases, it may be necessary to include pricing methodology (for example, for the purposes of future price reviews or the assessment of periodic or part payments).

However, within the requirement to create a binding enforceable contract, there is scope for agencies and suppliers to negotiate the types of information that will need to be included in a contract and to the extent that it is agreed, that public access should be restricted. In this regard, agencies should seek advice from the OCS.

For high value contracts, does all of the contract need to be published?

The requirement is for the entirety of the contract to be published or made available. This includes annexures, attachments, schedules and any other documents referenced in the contract such that it becomes part of the contract. The only exception is information that is excluded by virtue of a confidentiality provision included in the contract.

Does the policy affect intellectual property?

The policy is not intended to risk intellectual property of parties. For procurement activities, intellectual property will usually be protected through careful preparation of the specification; the drafting of the contract; or by approval of a confidentiality provision.

Does the policy extend to agreements between Crown entities?

The policy does not apply to contracts between two entities required to comply with Treasurer's Instructions issued pursuant to the Financial Management Act.

The policy does extend to contracts between an entity required to comply with Treasurer's Instructions and a Government entity that is not covered by the Financial Management Act.

The policy does not apply to contracts entered into by Government Business Enterprises, State-owned Companies or statutory authorities and entities not covered by the Financial Management Act.

What if a confidentiality provision has been included in a contract without appropriate approvals?

If a confidentiality provision has been included in a contract otherwise than in accordance with the policy, agencies should not release, publish or otherwise provide access to the confidential information as this may amount to a breach of the contract and may give rise to a claim against the

Crown. If a confidentiality provision has been included in a contract otherwise than in accordance with the policy, the agency should seek advice from the OCS on the extent of the restriction on publication.

Should information be released if there is a concern about legal action?

If an agency believes that publication or release of information in (or attached to) a contract may give rise to a legal claim against the Crown, advice should immediately be sought from the Office of the Crown Solicitor before the contract is published or released.

Confidentiality in procurement

Treasurer's Instruction C-1 *Contracts - Disclosure and Confidentiality in Government Contracting* applies.

The template procurement documentation prepared by the OCS (available on the Purchasing website) contains relevant clauses relating to the Government's confidentiality policy. Where the templates are not used, advice should be obtained from the OCS on appropriate wording to be included in either documentation or letters or emails seeking a quote.

The Treasurer's Instruction provides for confidentiality of information:

- during the process for all participants; and
- after the completion of the process, for unsuccessful suppliers.

However, information provided by the successful supplier that forms part of a resulting contract will not retain its confidentiality to the extent that it is reproduced in the contract unless approval is granted to include a confidentiality provision.

Major Office Accommodation Leases

Treasurer's Instruction C-2 *Contracts - Major Office Accommodation Leases* applies.

General

An agency's operational and management objectives are not to be the sole consideration in office accommodation planning. Adapting organisational and service delivery mechanisms may be required to meet the overall whole-of-Government office accommodation management objectives.

The Government's objectives, as set out in the Treasurer's Instruction, are:

- maximisation of occupation and utilisation of existing Crown owned office accommodation;
- maximisation of occupation and utilisation of existing Crown leased office accommodation; and
- compliance with the requirements above in the take up of lease options and end of lease renewals.

In addition to the requirements in Treasurer's Instruction C-2, agencies should be aware of any applicable requirements contained in Treasurer's Instruction FC-19 *Leases* and Australian Accounting Standard AASB 16 *Leases*.

Centralised office management by Treasury

While the Department of Treasury and Finance will coordinate major office accommodation leases on behalf of tenant agencies, each tenant agency is responsible for the day-to-day management of leases and associated facilities management.

Any budgetary implications relating to the assigning of tenancies by Treasury will be managed through the normal budgetary management processes.

If, during the term of a lease, a tenant agency is restructured or part of a tenant agency reallocated to another agency, then any lease obligations of the restructured or reallocated tenant agency are transferable to the new agency.

Relocation of agencies

Relocation of tenant agencies should result in a whole-of-government gain and benefit, with consideration being given to both the proposed relocation and the possible need to backfill space being vacated.

Generally, office accommodation relocation will not be considered in situations where the tenant agency has been in place for less than five years, unless the Secretary of the Department of Treasury and Finance is satisfied that there are exceptional circumstances to support the relocation.