

Complaints Handling

COVERED PROCUREMENTS



Complaints Handling: Covered Procurements

© Government of Tasmania 2020

Excerpts of this publication may be reproduced, with appropriate acknowledgement, as permitted under the *Copyright Act 1968*

For further information, please contact:

Procurement, Risk and Contract Management Branch

Department of Treasury and Finance

GPO Box 147

Hobart TAS 7001

Ph: 03 6145 5011 Email purchasing@treasury.tas.gov.au

Published February 2020

ISBN 978-1-922379-00-9 (PDF)

Contents

Introduction	2
<i>Government Procurement Review (International Free Trade Agreements) Act 2019</i>.....	2
What to do if you receive a complaint.....	2
Suspending the procurement process	3
Public interest certificates	3
Investigation of complaint	3
Timing imperatives for dealing with the complaint.....	3
Action in the Supreme Court	4
Further information	4

Introduction

This document provides information for agencies in relation to dealing with *covered procurement* complaints. It is **not** an enforceable procurement provision for the purposes of the *Government Procurement Review (International Free Trade Agreements) Act 2019*.

Government Procurement Review (International Free Trade Agreements) Act 2019

As part of the Tasmanian Government's free trade agreement obligations, an independent complaints mechanism for dealing with complaints related to *covered procurement* has been established by the *Government Procurement Review (International Free Trade Agreements) Act 2019* (the Act).

The Act allows a *supplier* to make a written complaint to an accountable authority where:

- there is an alleged contravention, or proposed contravention, of an *enforceable procurement provision* in relation to a covered procurement; and
- the interests of the *supplier* making the complaint are affected by the conduct or proposed conduct.

Where a complaint is made, the complaint must be investigated and a report prepared. Unless specific circumstances apply, the procurement must be suspended while the complaint is dealt with.

The Act also provides a mechanism for *suppliers* to apply to the Supreme Court of Tasmania for a declaration, an injunction or for compensation.

What to do if you receive a complaint

When a written complaint is received, legal advice from Crown Law should immediately be obtained on the applicability of the Act. Matters relevant to whether the Act will apply include:

- Does the complaint relate to a *covered procurement*¹?
- Is the complaint from a *supplier*²?
- Is it in writing?
- Does the *supplier* allege that there has or will be a contravention of an enforceable procurement provision contained in part 2 of the *International Procurement Obligations* publication?

¹ Refer Treasurer's Instruction PF-2 *Procurement Framework - Policies impacting on procurement: all procurement* (clause 2.3), the *International Procurement Obligations* publication, Part 2, section 1 and the Act

² A supplier is defined by section 3 of the Act to be "a person who supplies, or could supply, goods and services". Therefore it encompasses potential suppliers and tenderers etc

- Did, or will, the alleged contravention occur after the commencement of the Act³?
- Are, or will, the interests of the *supplier* be affected by the alleged contravention?

Advice should be obtained as a matter of priority. If the Act applies, the procurement process may need to be suspended.

SUSPENDING THE PROCUREMENT PROCESS

If the Act applies, the procurement must be suspended unless a *public interest certificate* is in place.

All interested *suppliers* who may be affected by the suspension should be notified that the procurement has been suspended.

PUBLIC INTEREST CERTIFICATES

The Act allows an agency to issue a written certificate (a *public interest certificate*) stating that it is not in the public interest for a procurement to be suspended while a complaint under section 7 of Act is being investigated or while the Court is considering an application for a declaration under section 10 of the Act.

INVESTIGATION OF COMPLAINT

The Act requires the accountable authority to investigate the conduct that is the subject of the complaint and prepare a report in relation to the investigation. The Act does not set out how the investigation should proceed or the process that is to be adopted.

It is therefore recommended that the complaint be investigated in accordance with the agency's general complaints procedure - appropriately modified as required to meet the requirements of the Act. Appropriate records should be retained.

Crown Law should be kept informed about the investigation, as it will need to act on behalf of the Crown if the complainant files an application with the Supreme Court.

TIMING IMPERATIVES FOR DEALING WITH THE COMPLAINT

As for all complaints, every attempt should be made to investigate and resolve the matter as quickly as possible and the *supplier* who has lodged the complaint should be kept up to date on progress at all times.

While Court imposed remedies may be impacted by the timing of an application, the timeframes in the Act can be extended by the Court.

Therefore, any delay by an agency in dealing with a complaint may result in a *supplier* lodging an application with the Court for a matter that could otherwise be resolved without the need for litigation.

³ The Act commenced on 21 February 2020

Action in the Supreme Court

A *supplier* may file an application with the Supreme Court of Tasmania for a declaration, an injunction or seeking compensation. The application may be filed at any time - even while a complaint is still under investigation.

Where an application is filed with the Court, Crown Law should be immediately advised.

Where the original investigation is not completed at the time of the filing of the application with the Court, the accountable authority may need to discontinue the investigation.

Further information

This guide provides information of a general nature in relation to handing complaints relating to *covered procurement*.

Agencies should refer to the *Government Procurement Review (International Free Trade Agreements) Act 2019* for specific requirements and legal advice should be sought from Crown Law in relation to rights and obligations in the context of a specific complaint or procurement process.

The *International Procurement Obligations* publication is available from the Purchasing website at www.purchasing.tas.gov.au.

The Treasurer's Instructions are available from the Treasury website at www.treasury.tas.gov.au.

Guidance information on complaints handling generally is available from the *Better Practice Guidelines (Accountability and Reporting)*, which is available from the Purchasing website.

GPO Box 147, Hobart TAS 7001
Phone: 03 6145 5011

Email: purchasing@treasury.tas.gov.au Visit: www.purchasing.tas.gov.au