

Guide

To Inclusions in Building and Construction Tender Documentation

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Purpose of Guide

These guidelines have been prepared by the Department of Treasury and Finance to assist government agencies to determine the appropriate inclusions in procurement and contract documentation when engaging contractors. Specifically the guide relates to the engagement of contractors prequalified under the National Prequalification System for Non-residential Building (the NPS), however, these guidelines may also be of assistance to agencies in determining the appropriate inclusions for other procurements relating to the engagement of contractors in other circumstances.

Background

The NPS applies to non-residential government building projects where the construction cost estimate is \$50 million or above.

Under the NPS, contractors who meet the prequalification criteria are registered as prequalified to undertake work in certain categories in a 'home jurisdiction'. Once prequalified in one jurisdiction, the contractor may apply to be mutually recognised in any of the other participating jurisdictions.

Effectively, this means when undertaking procurement of contractors for non-residential building for projects valued at \$50 million or more, the contractors eligible to tender must be prequalified for the NPS.

Further information on the NPS is available in the Guidelines, application forms, and contractor performance reports available on the Australasian Procurement and Construction Council website at www.apcc.gov.au.

Information that should be considered for inclusion in any Request for Tender/Contract documentation where NPS contractors are utilised

It is anticipated that the current pro forma Building and Construction RFT developed by the Crown Solicitor's office would generally not be used in circumstances where a Tasmanian Government agency was undertaking a project valued at \$50 million or more. As a result, rather than amending that document, it is considered appropriate that agencies liaise directly with the Crown Solicitor for the preparation of project specific RFT/contract documentation.

To ensure that the requirements and obligations of agencies and Tasmania are appropriately met in the tendering process, the Crown Solicitor should be requested to consider the following for inclusion in any RFT/contract documentation.

1. a requirement for contractors to lodge, with their tender submission, either a copy of their NPS certificate of approval OR a copy of their Mutual Recognition NPS certificate of approval;

Agencies should confirm the accuracy and currency of the prequalification information provided by contractors with Treasury prior to finalising tender evaluation.

2. advice that the agency will undertake an assessment of the financial capacity of the preferred contractor prior to finalising the selection process/contract and, if considered appropriate by the Crown Solicitor, acknowledgement by the contractor that this will occur. The contractor needs to provide whatever assistance is required to the agency (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, then the agency requires the capacity to move to the second ranked supplier and undertake a similar financial assessment and this should also be, subject to Crown Solicitor advice, reflected in the RFT documentation;

The requirement for a financial assessment prior to finalisation of the procurement process is a mandatory requirement under the Treasurer's Instruction 1211. As a financial assessment for prequalification may have occurred up to two years prior to the tender, it is inappropriate to rely solely on that assessment. It is vitally important that agencies ensure that the contractor remains financially viable prior to awarding a contract. The financial assessment must be conducted prior to the agency referring the process to their Procurement Review Committee. Agency advice in relation to the financial assessment may be obtained from the Manager, Contracts, Procurement and Property Branch, Department of Treasury and Finance, phone (03) 6166 4216 or by email at prequalified@treasury.tas.gov.au.

3. information relating to the legislative requirements of the *Construction Industry (Long Service) Act 1997* together with a requirement for the successful supplier to provide evidence of TasBuild registration to the Principal agency prior to commencement of works;

This information is collected by Treasury for registration under the Treasury Prequalification Scheme. However, there is no capacity for this information to be collected in relation to contractors prequalified under the NPS. As a result, agencies should ensure that TasBuild registration has occurred prior to works commencing.

4. information on the requirement for compliance with the *Building Act 2016* together with a requirement for the tenderers to provide evidence of compliance with registration requirements;
5. advice that the agency will be completing performance reports during the currency of the contract and that the performance reports may be provided to other Tasmanian Government entities as well as to other jurisdictions participating in the NPS. As currently occurs in the pro forma B&C RFT (clause 29 of Part One “Conditions of Tender”), subject to Crown Solicitor advice, the documentation should include an acknowledgement by the contractor that this will occur. Minimum performance reporting requirements are set out in TI 1220; and

The NPS Guidelines provide that once prequalified, the 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/agencies, information about the contractor’s financial position and its performance.

6. information on the Tasmanian Government’s Principal Nominated Insurance requirements.

Principal Nominated Insurance requirements for projects impacted by the NPS thresholds will need to be discussed with the Government’s Fund Administration Agent prior to preparation of RFT documentation.

Information that should be considered for inclusion in all building construction procurement documentation

In addition to the above, all building and construction procurement documentation should also comply with any other mandatory requirements of the Treasurer's Instructions relating to building and construction (the I200 series) and with any other relevant Government policies. Where the Crown Solicitor pro forma B&C RFT documentation is utilised these are generally included in those templates however agencies are encouraged to review the documentation used to ensure all necessary obligations are reflected as appropriate. Relevant clauses include, but are not limited to:

7. a requirement for the tenderer to comply with the *National Code of Practice for the Construction Industry 1997 Edition*, the *Tasmanian Annexure to the National Code of Practice for the Construction Industry* and the *Australian Standard Code of Tendering AS 4120-1994* (TI 1201; refer also to clause 3 of Part One "Conditions of Tender" of the pro forma B&C RFT);
8. requirements for the tenderer to comply with the *Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry* and/or have accreditation under the Australian Government building and construction industry WHS Accreditation scheme. **Note:** Agencies are only required to include these requirements where they have been specifically imposed under a formal agreement or arrangement with the Australian Government (this will usually occur where the works are being directly or indirectly funded by the Commonwealth according to certain funding values). Refer to clauses 3 and 36 of Part One "Conditions of Tender" of the pro forma RFT (Commonwealth Funded Work Version) for details of the funding values and the compulsory provisions;
9. acknowledgement that the *Australian Standard Code of Tendering AS 4120-1994* applies as part of the RFT ie to the agency (TI 1201; refer also to clause 4 of Part One "Conditions of Tender" of the pro forma B&C RFT);
10. information on the Crown's position on confidentiality provisions in government contracts (TIs 1229 and 1401, refer also to clause 32 of Part One "Conditions of Tender" of the pro forma B&C RFT) and disclosure requirements;
11. information on eligibility of tenderers (TI 1215; refer also to clause 27 of Part One "Conditions of Tender" of the pro forma B&C RFT);
12. information relating to licensing and registration requirements and the inclusion of a 'Declaration with respect to Licences and Registrations' (TIs 1207 and 1211; refer also to clauses 23.1 and 27 of Part One "Conditions of Tender" of the pro forma B&C RFT);
13. information on the Government Building and Construction Training Policy (TI 1223, refer also to clause 28 of Part One "Conditions of Tender" of the pro forma B&C RFT);

14. advice that the agency will be completing performance reports during and/or at the conclusion of the contract and that these may be provided to other Tasmanian Government entities and an acknowledgement that this will occur (TI 1220, refer also to clause 29 of Part One “Conditions of Tender” of the pro forma B&C RFT);
15. information relating to general workplace health and safety requirements and other legislative requirements (refer to clauses 30 and 31 of Part One “Conditions of Tender” of the pro forma B&C RFT);
16. information on the Government’s policy in relation to debriefing and complaints (TIs 1211 and 1219, refer also to clauses 33 and 34 of Part One “Conditions of Tender” of the pro forma B&C RFT);
17. information relating to security of payment and the *Building and Construction Industry Security of Payment Act 2009* (refer clause 35 of Part One “Conditions of Tender” of the pro forma B&C RFT);
18. 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, (refer Attachment A of Part Two “Tender Form” of the pro forma B&C RFT);
19. information on the Tasmanian Government’s asbestos requirements (refer clause 12 of Annexure Part C of the pro forma B&C RFT);
20. where relevant, information on the Government’s requirements in relation to the completion of a Tasmanian Industry Participation Plan for high value procurements and the publication of executive summaries relating to those plans (TI 1225); and
21. provisions relevant to the Government’s position on zero tolerance towards violence against women (TIs 1206 and 1207).

Please note that the above references to clauses contained in pro forma RFT documentation are provided **only** for background information and as a guide for what may be required to be included in the RFT. Crown Solicitor advice and review of any draft clauses and documentation should always be sought before finalising such documentation.