

International Procurement Obligations



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Part I Introduction

BACKGROUND

A number of international agreements, designed to reduce or eliminate barriers to trade or investment between participating countries, have been entered into by the Australian Government. Where a state or territory government has agreed to be bound by such agreements, participation is listed in the agreement.

A number of the agreements contain government procurement requirements and, where the Tasmanian Government has agreed to participate, specified Government entities are required to comply with these procurement obligations.

PURPOSE OF THIS PUBLICATION

This publication is issued by the Secretary of the Department of Treasury and Finance for the purposes of giving effect to Tasmania's international procurement obligations.

For the purposes of section 5.1 of the *Government Procurement Review (International Free Trade Agreements) Act 2019*, Part 2 of this publication (Appendices 1 - 4 inclusive) contains the **enforceable procurement provisions** required to be adopted by relevant entities when undertaking **covered procurement**. Many of the requirements mirror or closely align with the Government's procurement policy and practices – however there are some important differences. In this regard, some of the **enforceable procurement provisions** may be in addition to the requirements of the Treasurer's Instructions issued under the *Financial Management Act 2016*.

Procurement Officers should ensure that they are familiar with the **enforceable procurement provisions**. Compliance with the **enforceable procurement provisions** is subject to a formal complaints mechanism under the *Government Procurement Review (International Free Trade Agreements) Act 2019*. As such, where an application is made by a **supplier** to the Supreme Court of Tasmania alleging non-compliance, remedial action may be ordered, including interim injunctions and compensation.

For clarity, for the purposes of the formal complaints mechanisms contained in the Government Procurement Review (International Free Trade Agreements) Act 2019, the Government's procurement requirements as contained in the Treasurer's Instructions are not incorporated into, nor do they form part of the enforceable procurement provisions by association or relationship.

Guidance on the **enforceable procurement provisions** is located in Part 3 and further advice may be sought from the Department of Treasury and Finance, Procurement, Risk and Contract Management Branch.

APPLICABLE INTERNATIONAL PROCUREMENT AGREEMENTS

The **applicable international procurement agreements** are:

- *Australia – United States Free Trade Agreement (AUSFTA)* - Chapter 15;
- *Australia – Chile Free Trade Agreement (ACL-FTA)* - Chapter 15;
- *Korea – Australia Free Trade Agreement (KAFTA)* - Chapter 12;
- *Japan – Australia Economic Partnership Agreement (JAEPA)* - Chapter 17;
- *Singapore – Australia Free Trade Agreement (SAFTA)* - Chapter 6;
- *Comprehensive and Progressive Agreement for Trans–Pacific Partnership (TPP-11)* - Chapter 15;
- *World Trade Organisation - Government Procurement Agreement (WTO GPA)*;
- *Peru – Australia Free Trade Agreement (PAFTA)* - Chapter 14;
- *Australia – Hong Kong Free Trade Agreement (A-HKFTA)* - Chapter 13; and
- *Australia – United Kingdom Free Trade Agreement (A-UK FTA)* - Chapter 16.

While other agreements have been entered into by Australia, only those listed above currently contain **government procurement** obligations that apply to Tasmania. Additional agreements are under negotiation and will be added to this publication as necessary.

A dictionary at Appendix I contains definitions relevant to this publication. If a word is defined in that Appendix, it is shown in **bold italics** in the body of this document.

Part 2 Enforceable procurement provisions

All section references in Part 2 are references to sections in Part 2 unless otherwise specified.

I. WHEN IS A PROCUREMENT A COVERED PROCUREMENT?

I.1 Coverage

- I.1.1 Procurement is covered procurement if:
- (a) it is for the purchase of goods or **services** (including construction services) and combinations of goods and **services** for governmental purposes;
 - (b) it is by any contractual means including purchase, rental or lease (with or without an option to buy), **build-operate-transfer contracts and public works concession contracts**; and
 - (c) it is conducted by a **procuring entity**; and
 - (d) the estimated value (at the time of publication of the **notice of intended procurement**) is equal to, or in excess of, the thresholds set out in Appendix 3; and
 - (e) it is not otherwise excluded by an **enforceable procurement provision** or the exclusions and exceptions contained in Appendix 4.
- I.1.2 Where a **procuring entity** requires persons or entities not required to comply with the **enforceable procurement provisions** to procure in accordance with particular requirements, Section 2 (2.1) to (2.3) inclusive, Section 2 (2.4.3) and Section 10 (10.5) shall apply to the requirements imposed.
- I.1.3 For clarity, the establishment of a standing offer arrangement or panel arrangement will be a **covered procurement** where the procurement would otherwise meet the requirements of Section 1.1.1 above. However, a purchase from an established standing offer arrangement or panel arrangement, whether by way of a direct purchase order or otherwise, is not a **covered procurement** and, except for Section 2.1.4 below, is not required to comply with the **enforceable procurement provisions**.

I.2 Valuing a procurement

- I.2.1 The value of a procurement is to be estimated at the time of publication of a **notice of intended procurement**.
- I.2.2 The estimate is to include the estimated maximum total value of the procurement over its entire duration taking into account:
- (a) all forms of remuneration, including any premium, fee, commission, interest and other revenue stream that may be provided for under the proposed contract; and
 - (b) where the procurement provides for the possibility of options, the value of any option clause(s).

- 1.2.3 Where a procurement is to be conducted in multiple parts (with contracts to be awarded at the same time or over a given period to one or more **suppliers**), in order to determine whether it is a **covered procurement**, the calculation of the estimated maximum total value of those contracts is to be based on:
- (a) the value of such contracts awarded during the preceding 12 months or the **procuring entity's** preceding fiscal year, adjusted, where possible, to take into account anticipated changes in the quantity or value of the good or service being procured over the following 12 months; or
 - (b) the estimated value of such contracts to be awarded during the 12 months following the initial contract award or the **procuring entity's** fiscal year.
- 1.2.4 For procurement by lease or rental (including hire purchase) or procurement for which a total price is not specified, the **procuring entity** can apply Section 1 (1.2.5) or estimate the value of the procurement on the basis set out below:
- (a) for a fixed-term contract where the term is 12 months or less - the total estimated contract value for the contract's duration;
 - (b) for a fixed-term contract where the term exceeds 12 months - the total estimated contract value including the estimated residual value (payable at the end of the contract); or
 - (c) for a contract for an indefinite period or where it is uncertain whether the contract is to be fixed-term - the estimated monthly instalment multiplied by 48.
- 1.2.5 If the total estimated value of a procurement over its entire duration is not known, the procurement is deemed to be a **covered procurement** (unless otherwise excluded by an **enforceable procurement provision** or the exclusions and exceptions contained in Appendix 4).

2. KEY PRINCIPLES / GENERAL OBLIGATIONS

2.1 National treatment and non-discrimination requirement

- 2.1.1 The goods, **services** and **suppliers** of another party participating in an **applicable international procurement agreement** are to be treated no less favourably than domestic goods, **services** and **suppliers** and, in the case of multi-lateral agreements, no less favourably than any other party to those agreements.
- 2.1.2 A locally established **supplier** is not to be treated less favourably than another local established **supplier** on the basis of degree of foreign affiliation or ownership.
- 2.1.3 A locally established **supplier** is not to be discriminated against on the basis that the goods or **services** offered are goods or **services** of other parties to the **applicable international procurement agreements**.
- 2.1.4 The requirements for non-discriminatory treatment in Section 2 (2.1.1) to (2.1.3) inclusive extends to orders under contracts awarded for **covered procurements** (for example, when choosing a **supplier** from a panel or standing offer arrangement).

2.2 Offsets

Procuring entities may not seek, take account of, impose, or enforce **offsets** at any stage of a procurement.

2.3 Rules of Origin

The rules of origin that apply in the normal course of trade are to be applied in relation to **covered procurements**.

2.4 Non-avoidance of enforceable procurement provisions obligations and other general requirements

2.4.1 Tendering procedures are to be applied in a non-discriminatory and transparent manner consistent with the **enforceable procurement provisions**.

2.4.2 **Procuring entities** must not:

- (a) prepare, design, or otherwise structure or divide a procurement into separate procurements at any stage, or use a particular method to estimate the value of a procurement, for the purposes of totally or partially avoiding the free trade agreement obligations or a free trade agreement threshold;
- (b) adopt or apply registration systems or qualification procedures with the purpose or effect of creating unnecessary obstacles to the participation of **suppliers** of other parties to the **applicable international procurement agreements** or use such systems or procedures to prevent or delay the inclusion of **suppliers** on lists of **suppliers** (including **multi-use lists**) or prevent those **suppliers** from being considered for particular procurements;
- (c) use **limited tendering** for the purposes of avoiding competition between **suppliers**, protecting domestic **suppliers** or in a manner that discriminates against **suppliers** of the other parties to the **applicable international procurement agreements**;
- (d) set the time allowed for the submission of tenders or responses with the intention of causing a competitive disadvantage for **suppliers** of the other parties to the **applicable international procurement agreements**, or **suppliers** offering goods or **services** of the other parties;
- (e) prepare, adopt, or apply any **technical specification** or prescribe any conformity assessment procedure with the purpose or effect of creating unnecessary obstacles to trade;
- (f) impose any **condition for participation** that is less favourable to **suppliers** from those countries party to **applicable international procurement agreements** than those imposed on domestic **suppliers**;
- (g) provide information with regard to a specific procurement in a manner which would have the effect of giving a potential **supplier** an unfair advantage over competitors; or
- (h) cancel a procurement, use option clauses or cancel or modify contracts in order to avoid the obligations of an **enforceable procurement provisions**.

2.4.3 **Procuring entities** must conduct **covered procurement** in a transparent and impartial manner that:

- (a) is consistent with the requirements of the **enforceable procurement provisions**;
- (b) eliminates conflicts of interest or, where elimination is not possible, prevents such conflicts from influencing procedures or decisions made in the course of a procurement; and
- (c) prevents corrupt practices.

3. PROCUREMENT METHODS

3.1 Procurement methods available

Open tendering shall be used unless **limited tendering** or **selective tendering** applies.

3.2 Registration systems

A **supplier** registration system may be maintained under which interested **suppliers** are required to register and provide certain information.

3.3 Establishing a multi-use list

- 3.3.1 A **multi-use list** may be established or maintained for use provided a notice inviting interested **suppliers** to apply for inclusion on the list is published annually, and where published by electronic means, made continuously available by electronic means. The notice must contain the following information:
- (a) a description of the goods and **services**, or categories thereof, for which the list may be used;
 - (b) the conditions for participation to be satisfied by **suppliers** for inclusion on the list and the methods that will be used to verify a **supplier's** satisfaction of those conditions;
 - (c) the **procuring entity's** name and address and any other information necessary to contact the entity and obtain all relevant documents relating to the list;
 - (d) the deadline for submission of applications for inclusion on the list (if applicable);
 - (e) the period of validity of the list and the means for its renewal or termination, or if the period of validity is not provided, an indication of the methods by which notice will be given of termination of use of the list; and
 - (f) an indication that the list may be used for procurement covered by the **applicable international procurement agreements** that apply to that procurement.
- 3.3.2 Notwithstanding Section 3 (3.3.1), where a **multi-use list** will be valid for three years or less, a **procuring entity** may publish the notice referred to in sub-subsection 3.3.1 only once, at the beginning of the period of validity of the list, provided that the notice:
- (a) states the period of validity and that further notices will not be published; and
 - (b) is published by electronic means and is made available continuously during the period of its validity.
- 3.3.3 Where the notice referred to in Section 3 (3.3.1) is also intended to be used as the **notice of intended procurement** (refer Section 6 (6.1)):
- (a) the notice must include in addition to the requirements above:
 - i. as much of the information required under Section 6 (6.4) as is available; and
 - ii. a statement that only **suppliers** on the **multi-use list** will receive future notices of procurement covered by the list; and
 - (b) the **procuring entity** must promptly provide to **suppliers** that have expressed an interest in the procurement, sufficient information to permit them to assess their interest including all the remaining information required by Section 6 (6.4), to the extent that such information is available.

- 3.3.4 Where there is an intention to select a limited number of qualified suppliers from a multi-use list to be invited to tender (**selective tendering**), the notice referred to in Section 3 (3.3.1) must also:
- (a) include a statement that a limited number of **suppliers** will be permitted to tender and the criteria that will be used to select those **suppliers** and, if applicable, any limitation on the number of suppliers that will be permitted to tender (refer Section 3 (3.4.5)); and
 - (b) be published sufficiently in advance of the procurement to allow interested suppliers to request inclusion on the list.
- 3.3.5 A **procuring entity** must allow **suppliers** to apply at any time for inclusion on a **multi-use list** and all **suppliers** that satisfy the conditions for participation set out in the **notice of intended procurement** must be included on the list within a reasonably short time.
- 3.3.6 If a **supplier** that is not included on a **multi-use list** submits a request for participation in a procurement based on the list and submits all required documents within the time periods provided for, the request is to be examined. **Procuring entities** are not to exclude such a **supplier** from consideration in respect of the procurement unless, in exceptional cases, due to the complexity of the procurement, it is not able to complete the examination of the request for inclusion on the list within the time period allowed for the submission of tenders.

3.4 Selective tendering

- 3.4.1 When using selective tendering:
- (a) to ensure optimum effective competition, tenders are to be invited from the maximum number of domestic **suppliers** and **suppliers** of the other parties to the **applicable international procurement agreements**, consistent with the efficient operation of the procurement system; and
 - (b) **suppliers** are to be selected to participate in a fair and non-discriminatory manner.

Expressions of interest, requests for proposals, requests to participate

- 3.4.2 The procuring entity must:
- (a) publish a **notice of intended procurement** that invites **suppliers** to submit a request for participation (i.e., a proposal or expression of interest etc.) in the procurement; and
 - (b) include in the **notice of intended procurement** the following information:
 - i. the **procuring entity's** name and address together with any other information necessary to contact the entity and obtain all relevant documents relating to the procurement, and the cost and terms of payment to obtain the relevant documents, if any;
 - ii. a description of the procurement, including, if appropriate, the nature and quantity of the goods or **services** to be procured and a description of any options, or the estimated quantity if the quantity is not known;
 - iii. the procurement method that will be used;
 - iv. the address and any final date for the submission of requests for participation in the procurement;

- v. a list and a brief description of any **conditions for participation of suppliers** including any related requirements for specific documents or certifications that **suppliers** must provide;
- vi. if applicable, a statement that a limited number of **suppliers** will be permitted to tender, any limitation on the number of **suppliers** that will be permitted to tender and the criteria that will be used to select the limited number of **suppliers** for tendering (refer Section 3 (3.4.5)); and
- vii. an indication that the procurement is covered by the relevant **applicable international procurement agreements**.

3.4.3 The notice is to be published sufficiently in advance of the procurement to allow interested **suppliers** to request participation.

*Approaching suppliers who have responded to an invitation to participate, an expression of interest or included on a **multi-use list**.*

3.4.4 The list of **suppliers** that:

- (a) have lodged an expression of interest or responded to a request for proposal or invitation to participate; or
- (b) are included on a **multi-use list** compiled in accordance with the requirements set out in Section 3 (3.3), where the list is appropriate to the type of procurement being undertaken;

may be used as the basis for inviting tenders.

3.4.5 All **suppliers** that submitted a response to a notice referred to in Section 3.3 (3.3.1) or Section 3.4 (3.4.2) and met the conditions for participation or were included on a **multi-use list**, must be called upon to submit a tender unless it was stated in the notices that a limited number of **suppliers** will be permitted to tender and the notice includes the criteria for selecting those limited number of **suppliers**.

3.4.6 In determining the **suppliers** under Section 3.4.4(a) that will be invited to tender:

- (a) in assessing technical ability, assess the extent to which the **suppliers'** proposals or responses meet the technical and performance specifications of the procurement; and
- (b) limit the number of **suppliers** that are invited to tender based on the rating of the supplier proposals or responses.

3.4.7 The tender documentation is to be made available to all the **suppliers** approached to submit a tender at the same time.

3.4.8 If not provided beforehand, by the commencement time for tendering, the following information is to be provided to all **suppliers** approached to submit a tender response:

- (a) for recurring contracts, an estimate, if possible, of the timing of subsequent notices of intended procurement;
- (b) a description of any options;
- (c) the time-frame for delivery of goods or **services** or the duration of the contract;
- (d) the address and the final date for the submission of tenders; and
- (e) the language or languages in which tenders or requests for participation may be submitted, if other than English.

Supplier notifications when using selective tendering

3.4.9 Where a **supplier** applies to participate, responds to a call for expressions of interest or applies for inclusion on a **multi-use list**, the **supplier** is to be promptly advised of decisions in relation to their participation.

- 3.4.10 Where a procuring entity:
- (a) rejects an application for participation, a proposal or an expression of interest;
 - (b) rejects a request for inclusion on a **multi-use list**; or
 - (c) ceases to recognise a **supplier** as being qualified/having satisfied the **conditions for participation**;

it must promptly inform the **supplier** and, on request, promptly provide it with a **written** explanation of the reasons for its decision.

3.5 Limited tendering

- 3.5.1 Where one or more of the specified circumstances below apply, a **procuring entity** may choose to not apply the **enforceable procurement provisions** set out in this document relating to Qualification of Suppliers/Multi-use lists/Selective Tendering (Section 3 (3.2) to (3.4) inclusive), Conditions for Participation (Section 4), Notices of Intended Procurement (Section 6 and Section 3, (3.3.1, 3.4.2 - 3.4.3), Time Periods (Section 7), Tender Documentation (Section 8), and Treatment of Tenders and Awarding of Contracts (Section 9 (9.1.1), (9.1.3), (9.2.1), (9.2.2), (9.2.4) and Section 2 (2.4.2(h)).

- 3.5.2 **Limited tendering** may be used in the specific circumstances set out below:

- (a) where, in response to a prior notice, invitation to participate or invitation to tender:
 - i. no tenders were submitted or no suppliers requested participation;
 - ii. no tenders were submitted that conform to the essential requirements in the tender documentation; or
 - iii. no **suppliers** satisfied the conditions for participation, provided the **procuring entity** does not substantially modify the essential requirements of the procurement set out in the notices or tender documentation;
- (b) where the goods or **services** can be supplied only by a particular **supplier** and no reasonable alternative or substitute goods or **services** exist for any of the following reasons:
 - i. the requirement is for a work of art;
 - ii. the protection of patents, copyrights, or other exclusive rights, or proprietary information; or
 - iii. due to an absence of competition for technical reasons;
- (c) for additional deliveries by the original **supplier** or authorised representative/agent, of goods or **services** that were not included in the initial procurement if a change of suppliers for such additional goods or **services**:
 - i. cannot be made for technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, **services** or installations procured under the initial procurement; and
 - ii. would cause significant inconvenience or substantial duplication of costs for the **procuring entity**;
- (d) for goods purchased on a commodity market;
- (e) where a **procuring entity** procures a prototype or a first good or **service** that is intended for limited trial or that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. Original development of a prototype or a first good or **service** may include limited production or supply in order to incorporate the results of

field testing and to demonstrate that the prototype or the first good or **service** is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs. Subsequent procurements of newly developed goods or **services**, shall be subject to the normal free trade agreement obligations and processes;

- (f) where, for reasons of extreme urgency brought about by events unforeseeable by the **procuring entity**, the goods or **services** could not be obtained in time using an **open tendering** process or **selective tendering** process;
- (g) for purchases made under exceptionally advantageous conditions that only arise in the very short term, such as from unusual disposals, unsolicited innovative proposals, liquidation, bankruptcy or receivership and not for routine purchases from regular suppliers; or
- (h) in the case of a contract awarded to the winner of a design contest provided that:
 - i. the contest has been organised in a manner that is consistent with the **enforceable procurement provisions**, in particular relating to the publication of a **notice of intended procurement**; and
 - ii. the contest is judged by an independent jury with a view to a design contract being awarded to the winner.

3.5.3 For each contract awarded as a result of **limited tendering**, **procuring entities** are to prepare a **written** report that details:

- (a) the name of the **procuring entity**;
- (b) the value and kind of goods or **services** procured; and
- (c) a statement indicating the circumstances and conditions that justified the use of **limited tendering** (as opposed to **open tendering** or **selective tendering**).

4. CONDITIONS FOR PARTICIPATION

- 4.1 Conditions for participation are the minimum conditions that potential **suppliers** must meet in order to participate in a procurement process or for submissions to be considered. This may include a requirement to undertake an accreditation or validation procedure.
- 4.2 Conditions for participation are to be limited to those that are essential to ensure that **suppliers** have the legal and financial capacities and the commercial and technical ability to fulfil the requirements of the procurement.
- 4.3 Conditions for participation that require that the **supplier** have prior work experience in Australia or have been previously awarded contracts by a Government entity in Australia must not be used. However, prior relevant experience, where this is essential to meet the requirements of the procurement, is allowed.
- 4.4 The assessment of a **supplier's** satisfaction of the conditions is to be based solely on the conditions for participation described in the notices or tender documentation and on the basis of a **supplier's** business activities both inside and outside Australia.
- 4.5 Nothing in subsections 4.1 to 4.3 prevents the exclusion of a potential **supplier** (provided there is supporting material) on grounds such as:
 - (a) bankruptcy or insolvency;
 - (b) false declarations, or
 - (c) significant deficiencies in performance of any substantive requirement or obligation under a prior contract.

5. TECHNICAL SPECIFICATIONS

- 5.1 In setting out the **technical specifications** for a procurement, the **procuring entity** is to, where appropriate:
- (a) specify these in terms of performance and functional requirements (rather than design or descriptive characteristics); and
 - (b) base these on international **standards**, where international **standards** exist. Where they do not exist, then base the **technical specifications** on national technical regulations, recognised national **standards** or building codes.
- 5.2 If design or descriptive characteristics are used in the **technical specifications**, a **procuring entity** should indicate, where appropriate, that it will consider tenders of equivalent goods or **services** that demonstrably fulfil the requirements of the procurement by including words such as “or equivalent” in the tender documentation.
- 5.3 A **procuring entity** cannot:
- (a) use **technical specifications** that require or refer to a particular trademark or trade name, patent, copyright, design or type, specific origin, producer or **supplier**, unless there is no other precise or intelligible way of describing the requirements. Where such a reference is required, words such as “or equivalent” must be included in the tender documentation.
 - (b) seek or accept advice that may be used in the preparation or adoption of any **technical specification** from a person that may have a commercial interest in the procurement, if seeking or accepting the advice would have the effect of precluding competition.
- 5.4 Market research may be conducted in developing specifications for a particular procurement.
- 5.5 Nothing in subsections 5.1 to 5.4 precludes preparing, adopting or applying **technical specifications** to promote the conservation of natural resources and the environment nor prevent preparing, adopting or applying technical specifications required to protect sensitive government information, including specifications that may affect or limit the storage, hosting or processing of such information outside Australia.

6. NOTICES OF INTENDED PROCUREMENT

- 6.1 For each **covered procurement** including for **selective tendering** and when purchasing from a **multi-use list** (except as set out in Section 6 (6.3)), a **notice of intended procurement** must be published inviting interested **suppliers** to submit tenders, or, where appropriate, applications for participation in a procurement or expressions of interest. The **notice of intended procurement** is to be published and remain readily accessible to the public until the expiration of the deadline for **supplier** responses.
- 6.2 **Notices of intended procurement** should provide **suppliers** with adequate time to prepare and submit responses.
- 6.3 A **notice of intended procurement** does not need to be published when:
- (a) approaching **suppliers** listed on a **multi-use list** that has been established in accordance with the requirements contained in Section 3 (3.3), where the original notice establishing the list meets the requirements set out in Section 3 (3.3.3(a)); and
 - (b) undertaking limited tendering.
- 6.4 Each **notice of intended procurement** is to include the following information:

- (a) the **procuring entity's** name and address and other information necessary to contact the entity and obtain all relevant documents relating to the procurement and the cost and terms of payment to obtain the relevant documents, if any;
- (b) a description of the procurement, including the nature and the quantity of the goods or **services** to be provided, or, where the quantity is not known, the estimated quantity;
- (c) for recurring contracts, an estimate, if possible, of the timing of subsequent notices of intended procurement;
- (d) a list and brief description of any conditions for participation of **suppliers** (this is to include any related requirements for specific documents or certifications that **suppliers** must provide);
- (e) the time-frame for the delivery of goods or **services** or duration of the contract;
- (f) the procurement method that will be used;
- (g) the address and the time limit (final date) for the submission of tenders;
- (h) a description of any options;
- (i) the language or languages in which tenders or requests for participation may be submitted, if other than English;
- (j) if applicable, the address and any final date for the submission of requests for participation in the procurement;
- (k) if a **procuring entity** intends to select a limited number of **qualified suppliers** to be invited to tender, the criteria that will be used to select them, and if applicable, any limitation on the number of suppliers that will be permitted to tender;
- (l) an indication that the procurement is covered by an **applicable international procurement agreements** and a list of the agreements that apply; and
- (m) the time limit for submitting applications for registration or prequalification - where there is an intention to limit the submission of tenders to **suppliers** determined to have satisfied **conditions for participation** that require separate registration or prequalification procedures, except where a notice calling for participants in a **multi-use list** has been readily available in electronic form for a reasonable period.

6.5 Where a notice is published in a language other than English, procuring entities are to publish a summary notice that is readily accessible, at the same time as the publication of the **notice of intended procurement**, in one of the World Trade Organisation languages (such as English) containing at least the following information:

- (a) the subject matter of the procurement;
- (b) the final date for the submission of tenders or, where applicable, any final date for the submission of requests for participation in the procurement or for inclusion on a **multi-use list**; and
- (c) the address from which documents relating to the procurement may be requested.

7. TIME PERIODS

7.1 General

7.1.1 **Procuring entities**, consistent with their own reasonable needs, are to provide **suppliers** with adequate time to obtain the documentation and properly respond to

either a request for tender or a notice to submit applications to participation/expressions of interest. In determining adequacy take into account:

- (a) the nature and complexity of the procurement;
- (b) the date of publication of the **notice of intended procurement**;
- (c) the extent of sub-contracting anticipated;
- (d) the time necessary for transmitting tenders by non-electronic means from foreign as well as domestic locations if electronic submission is not used; and
- (e) the mandatory minimum time periods referred to below.

7.1.2 Where **suppliers** are required to register or pre-qualify before being permitted to participate in a **covered procurement** the notice inviting **suppliers** to apply for registration or prequalification is to be published sufficiently in advance of the procurement to allow for interested **suppliers**, including **suppliers** from countries with whom an **applicable international procurement agreement** is in place, to initiate and, to the extent that it is compatible with the efficient operation of the procurement process, complete the registration or qualification procedures.

7.1.3 All **suppliers** must be provided with the same deadline to respond. This includes where the closing date is modified such as where information provided to **suppliers** is amended during the procurement process and an extension of the time limit for qualification or tendering procedures is provided or where negotiations are terminated and **suppliers** are permitted to submit new tenders.

7.2 Minimum time periods

7.2.1 For **selective tendering**, the final date for the submission of a request for participation shall not, in principle be less than **25 days** from the date of publication of the **notice of intended procurement** unless a duly substantiated state of urgency renders this time period impracticable. In such cases, the time period for the submission of a request for participation may be reduced to no less than **10 days**.

7.2.2 Except as otherwise reduced by the circumstances set out below, the final date for the submission of tenders shall not be less than **40 days** from the date on which:

- (a) in the case of open tendering, the notice of intended procurement is published; or
- (b) in the case of **selective tendering** (including purchasing from a **multi-use list**), **suppliers** are invited to submit tenders.

7.2.3 The minimum time limit for tendering may be reduced by five **days** for each one of the following:

- (a) the **notice of intended procurement** is published by electronic means;
- (b) the tender documentation is made available by electronic means from the date of the publication of the **notice of intended procurement**; and
- (c) tenders are accepted by electronic means.

7.2.4 The time period of tendering may also be reduced (regardless of whether any of the circumstances above apply or not) to no less than **10 days** if:

- (a) the **procuring entity** publishes a notice being a Notice of Planned Procurement (refer Section 10 (10.4)) at least **40 days** and not more than 12 months in advance of the publication of the **notice of intended procurement**, and such notice contains:
 - i. a description of the procurement;
 - ii. the approximate final dates for the submission of tenders or, requests for participation in a procurement;

- iii. a statement that interested **suppliers** should express their interest in the procurement to the **procuring entity**;
 - iv. the address from which documents relating to the procurement may be obtained; and
 - v. as much of the information that is required to be included in a **notice of intended procurement** as is available;
- (b) a duly substantiated state of urgency renders impracticable the time limits specified above.
- 7.2.5 The use of any method in sub-subsections 7.2.3 and 7.2.4, or combination thereof, shall in no case result in the reduction of the time period for tendering to less than 10 **days** from the date on which the **notice of intended procurement** is published.
- 7.2.6 Notwithstanding any other provision in this section, where a **procuring entity** purchases **commercial goods or services** or any combination thereof, it may reduce the time period for tendering to not less than 13 days, provided it publishes by electronic means, at the same time, both the **notice of intended procurement** and the tender documentation. Where it accepts tenders for **commercial goods or services** by electronic means, it may further reduce the time period to not less than 10 **days**.

8. TENDER DOCUMENTATION

- 8.1 A **procuring entity** must promptly make available, or provide, on request to any interested **supplier**, tender documentation that includes all information necessary to permit **suppliers** to prepare and submit responsive tenders.
- 8.2 The documentation must include all the criteria that will be considered in awarding the contract. The evaluation criterion may include, among others, price and other cost factors, quality, technical merit, environmental characteristics and terms of delivery.
- 8.3 Unless already provided in the **notice of intended procurement**, the documentation must also include a complete description of:
- (a) the procurement, including the nature, scope, and, where known, the quantity of the goods or **services** to be procured (or if the quantity is not known, the estimated quantity) and any requirements to be fulfilled (ie any **technical specifications**, conformity certification, plans, drawings or instructional materials);
 - (b) any conditions for participation, including any financial guarantees and a list of information and documents that **suppliers** are required to submit in connection with the conditions for participation;
 - (c) the relative importance of the criteria to be considered in the awarding of the contract (refer to subsection 8.2);
 - (d) if there will be a public opening of tenders, the date, time and place for the opening of tenders and, where appropriate, the persons authorised to be present;
 - (e) any other terms or conditions relevant to the evaluation of tenders;
 - (f) any other terms or conditions, including terms of payment and any limitation on the means by which tenders may be submitted, such as whether on paper or by electronic means;
 - (g) any date for delivery of a good or supply of a service. In establishing the date for delivery, the **procuring entity** is to take into account factors such as the complexity of the procurement the extent of subcontracting anticipated and the

realistic time required for production, de-stocking and transport of goods from the point of supply or for supply of service; and

- (h) where the **procuring entity** will conduct the procurement by electronic means, any authentication and encryption requirements or other requirements related to the submission of information by electronic means.

8.4 A **procuring entity** must also:

- (a) promptly make available tender documentation to ensure that interested **suppliers** have sufficient time to submit responsive tenders;
- (b) promptly reply to any reasonable request for relevant information by an interested or participating **supplier**, provided that it does not make available information with regard to a specific procurement in a manner that would give a **supplier** or group of **suppliers** an advantage over its competitors in the procurement; and
- (c) where, prior to the award of a contract it modifies the criteria or technical requirements set out in either a notice or in tender documentation, or amends or re-issues either a notice or tender documentation, transmit **in writing** all modifications or amended or re-issued notices or tender documentation:
 - i. to all the **suppliers** that are participating at the time the information is amended (if known) and in all other cases, in the same manner as the original information; and
 - ii. in adequate time to allow such **suppliers** to modify and re-submit tenders as appropriate.

9. TREATMENT OF TENDERS, AWARDING CONTRACTS AND POST AWARD INFORMATION

9.1 Receipt and opening of tenders

- 9.1.1 Tenders are to be received and opened under procedures that guarantee the fairness and impartiality of the procurement process and treated in confidence to the extent permitted by domestic law.
- 9.1.2 Information must not be provided to particular **suppliers** that might prejudice fair competition between **suppliers**.
- 9.1.3 If **suppliers** are provided with opportunities to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the same opportunities must be provided to all participating **suppliers**.
- 9.1.4 A **procuring entity** is to require all participating **suppliers** to submit tenders in accordance with a common deadline. It, however, cannot penalise any **supplier** whose tender is received after the time specified for receiving tenders if the delay is due to mishandling on the **procuring entity's** part.

9.2 Awarding of contracts

- 9.2.1 A **procuring entity** may not consider a tender unless it is submitted **in writing** and, at the time of opening, it conforms to the essential requirements of the tender documentation and is submitted by a **supplier** who satisfies the **conditions for participation**.

- 9.2.2 Unless determined that it is not in the public interest to award a contract, the contract is to be awarded to the **supplier** that the **procuring entity** has determined to be fully capable of undertaking the contract and whose tender it has determined to be the lowest price, the best value or the most advantageous, in accordance with the essential requirements and evaluation criteria specified in the notices and tender documentation.
- 9.2.3 Nothing in this Part 2 prevents a **procuring entity** from:
- (a) negotiating the form of the contract with any one or more participating suppliers; or
 - (b) awarding a contract on terms and/or conditions different to those included in the tender documentation.
- 9.2.4 Where a **procuring entity** receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the **supplier** that it satisfies the **conditions for participation** and is capable of undertaking the terms of the contract.

9.3 Post award information

- 9.3.1 **Suppliers** that have submitted tenders are to be promptly informed of contract award decisions **in writing**. On request and subject to Section 10 (10.3), an unsuccessful **supplier** is to be provided with the reasons that its tender was not selected and the relative advantages of the successful **supplier's** tender.
- 9.3.2 Not later than **60 days** after the award of a contract for a **covered procurement**, a notice must be published in an officially designated publication, which may be in an electronic or paper medium including at least the following information about the contract:
- (a) the name and address of the **procuring entity**;
 - (b) a description of the goods or **services** procured;
 - (c) the date of award or, if as part of the advice provided to unsuccessful **suppliers** the date of award has already been provided, the contract date;
 - (d) the contract value;
 - (e) the name and address of the successful **supplier**; and
 - (f) the procurement method used.
- 9.3.3 Where a **limited tendering** procedure has been undertaken, a brief description of the circumstances justifying the use of that procedure is also required.

10. MISCELLANEOUS

10.1 Domestic Review/Complaints and Challenges

- 10.1.1 Where a complaint is raised with a **procuring entity**, the entity must accord impartial and timely consideration to it in a manner that is not prejudicial to the **supplier's** participation in ongoing or future procurement or its right to seek corrective measures under the formal review procedure contained in the *Government Procurement Review (International Free Trade Agreements) Act 2019*.

10.2 Maintenance of documentation

Procuring entities are to maintain:

- (a) documentation, records and reports relating to tendering procedures and contract awards, including those relating to **limited tendering**, for at least three years after the award of the contract; and
- (b) data that ensures the appropriate traceability of the conduct of **covered procurement** by electronic means.

10.3 Disclosure of information

- 10.3.1 **Parties** and **procuring entities** must not except to the extent required by law or with the **written** authorisation of the **supplier** that provided the information, disclose information that would prejudice legitimate commercial interests of a particular **supplier**.
- 10.3.2 Where confidential information is made available to **procuring entities**, it is to be kept confidential and is not to be used for a purpose other than that for which it was made available.
- 10.3.3 Disclosure of confidential information may occur where a **Party** or its **procuring entities** are required to make disclosure under its domestic law or where disclosure is authorised by the person that furnished the information.

10.4 Notices of planned procurement

Procuring entities are encouraged to publish, as early as possible in each fiscal year, a notice regarding their future procurement plans. This should include the subject matter of anticipated procurements and the planned date of publication of the **notice of intended procurement** or commencement of the tender process. If a notice of planned procurement is published, this may be used to establish shorter time limits for tendering for **covered procurements** provided the notice meets certain requirements. Refer to information in Section 7.

10.5 Use of electronic means

Where procurement by electronic means is to occur, a **procuring entity** is to:

- (a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and
- (b) establish and maintain mechanisms that ensure the integrity of information provided by **suppliers** (ie in requests for participation and tenders) including establishment of the time of receipt and the prevention of inappropriate access.

APPENDIX I - DICTIONARY

applicable international procurement agreement

Has the meaning ascribed to it in the *Government Procurement Review (International Free Trade Agreements) Act 2019*. The agreements are listed in Part I of this publication.

build-operate-transfer contract and public works concession contract

Any contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plant, buildings, facilities or other government owned works and under which, as consideration for a **supplier's** execution of a contractual arrangement, a **procuring entity** grants to the **supplier**, for a specified period of time, temporary ownership or a right to control and operate, and demand payment for the use of such works for the duration of the contract.

commercial goods and/or services

Goods and services of a type that are sold or offered for sale to, and customarily purchased by, non-governmental buyers for non-governmental purposes.

construction services

For the purposes of the WTO GPA, means a service that has as its objective the realisation by whatever means of civil or building works, based on Division 51 of the United Nations Provisional Central Product Classification (CPC).

covered procurements

A procurement where compliance with **applicable international procurement agreements** is required. The circumstances where a procurement will be covered are set out in Section I (I.1).

days

Means calendar days.

enforceable procurement provisions

A provision that applies when conducting **covered procurement**. For the purposes of the *Government Procurement Review (International Free Trade Agreements) Act 2019*, these are contained in Part 2 of this publication (Appendices 1 - 4 inclusive).

enterprise

Any entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporate, trust, partnership, sole proprietorship, joint venture, association or similar organisation.

in writing/written

Any worded or numbered expression that can be read, reproduced and later communicated. It may include electronically transmitted and stored information.

limited tender/limited tendering

A procurement method where the **procuring entity** contacts a **supplier** or **suppliers** of its choice.

measure

Includes any law, regulation, procedure, requirement, practice or guideline.

multi-use list

A list of **suppliers** that a **procuring entity** has determined satisfies the conditions for participation for inclusion on that list and intends to use more than once.

notice of intended procurement

A notice published by a **procuring entity** inviting interested **suppliers** to submit a request for participation, a tender or both. For Tasmania, this includes notices published on the 'open for bids' section of the Tenders website and also newspaper advertisements, where those are used.

offsets

Any condition or undertaking that requires the use of domestic content, domestic **suppliers**, the licensing of technology, technology transfer, investment, counter-trade, or similar actions to encourage local development or to improve a Party's balance-of-payments accounts.

open tender/ open tendering

A procurement method where all interested **suppliers** may submit a tender.

person

A natural person or an enterprise.

procuring entity

An entity listed in the Annexures to the relevant agreements. For Tasmania these are reproduced at Appendix 2 of this Part.

publish

To disseminate information in an electronic or paper medium that is distributed widely and is readily accessible to the general public.

qualified supplier

A **supplier** that a **procuring entity** recognises as having satisfied the conditions for participation.

selective tendering

A procurement method where the **procuring entity** invites only **qualified suppliers** to submit tenders.

services

Includes construction services, unless otherwise specified or indicated.

standard

Means a document approved by a recognised body that provides for common and repeated use, rules, guidelines or characteristics for goods or **services**, or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packing, marking or labelling requirements as they apply to a good, service, process or production method.

supplier

A person or group of persons that provides or could provide goods or **services** to a **procuring entity**.

technical specifications

A tendering requirement that:

- sets out the characteristics of:
 - goods to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production; or
 - **services** to be procured, or the processes or methods for their provision, including any applicable administrative provisions; or
- addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service.

For the purposes of the Australia-Chile Free Trade Agreement it also includes tendering requirements that set out conformity assessment procedures prescribed by a procurement entity.

APPENDIX 2 - TASMANIAN PROCURING ENTITIES COVERED BY THE APPLICABLE INTERNATIONAL PROCUREMENT AGREEMENTS

Brand Tasmania

Department for Education, Children and Young People

Department of Health (incl. the Tasmanian Health Service)

Department of Justice

Department of Natural Resources and Environment Tasmania

Department of Police, Fire and Emergency Management

Department of Premier and Cabinet

Department of State Growth

Department of Treasury and Finance

Director of Inland Fisheries

Environment Protection Authority

Homes Tasmania

House of Assembly

Integrity Commission

Legislative Council

Legislature-General

Macquarie Point Development Corporation

Marine and Safety Tasmania

Office of the Director of Public Prosecutions

Office of the Governor

Office of the Ombudsman

Royal Tasmanian Botanical Gardens

Stadiums Tasmania

State Fire Commission

Tasmanian Audit Office

Tasmanian Museum and Art Gallery

TasTAFE

Tourism Tasmania

APPENDIX 3 - THRESHOLDS

From 1 January 2024, the **enforceable procurement provisions** apply to procurement of:

- (a) goods and services where the procurement has an estimated dollar value equal to, or in excess of, \$693 000 (inclusive of GST); and
- (b) construction services where the procurement has an estimated dollar value equal to, or in excess of, \$9.762 million (inclusive of GST).

APPENDIX 4 - EXCLUSIONS AND EXCEPTIONS

Exclusions from coverage under applicable international procurement agreements

The **enforceable procurement provisions** do not apply to:

- the procurement (including leasing) of land, existing buildings or other immovable property or rights (not including construction services);
- non-contractual agreements or any form of assistance that a Party or a government enterprise provides, including grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, cooperative agreements, and sponsorship arrangements;
- the engagement of an expert or neutral person, including counsel or barristers, for any current or anticipated litigation or dispute;
- procurement by a procuring entity from another government entity;
- purchases funded by international grants, loans, or other assistance, where the provision of such assistance is subject to conditions inconsistent with the enforceable procurement provisions. If the procedures or conditions of the international organisation or donor do not restrict the participation of suppliers then the procurement shall be subject to requirements relating to national treatment and non-discrimination (Section 2 (2.1-2.4));
- purchases funded by grants and sponsorship payments from persons or entities not listed in Appendix 2 or not included in the Australian annex to the applicable international procurement agreements;
- procurement for the direct purpose of providing foreign assistance;
- procurement of research and development services;
- procurement of goods and services (including construction) outside the territory of the procuring Party, for consumption outside the territory of the procuring Party;
- acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, and sale and distribution services for government debt;
- procurement of plasma fractionation services;
- procurement of government advertising services;
- procurement of health and welfare services; and
- procurement of education services.

The requirements related to national treatment and non-discrimination (Section 2 (2.1-2.4)), shall not apply to customs duties and charges of any kind imposed on or in connection with, importation the method of levying such duties and charges, other import regulations or formalities, and measures affecting trade in services other than measures governing covered procurement.

Preferences and measures excluded from coverage

Subject to the requirement that such **measures** are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail, or a disguised restriction on international trade between the Parties, nothing in the **applicable international procurement agreements** prevent the adoption or maintenance of **measures**:

- necessary to protect public morals, order or safety;
- necessary to protect human, animal or plant life or health (including environmental measures necessary to protect human, animal or plant life or health);
- necessary to protect intellectual property; or
- relating to the goods or services of handicapped persons/a person with disabilities, of philanthropic or not for profit institutions, or of prison labour.

The provisions of the **applicable international procurement agreements** also do not apply to:

- any form of preference to benefit small and medium enterprises (SMEs);
- measures to protect national treasures of artistic, historic or archaeological value;
- measures for the health and welfare of indigenous people; and
- measures for the economic and social advancement of indigenous people.

The provisions of the **applicable international procurement agreements** do not prevent a party from taking any action or applying any measures it considers necessary for the protection of its essential security interests.

Part 3 Additional guidance

*The information in this Part is provided as guidance for **procuring entities** in relation to Part 2 of this publication. It does not contain **enforceable procurement provisions**.*

Section 1 When is a procurement a covered procurement

subsection 1.1 (Coverage)

Follow the guidance flow chart at the back of this Part to determine if a procurement is a **covered procurement**. If a procurement is not a **covered procurement**, the **enforceable procurement provisions** in Part 2 do not apply.

subsection 1.2 (Valuing a procurement)

The value of a procurement is one of the key factors in determining whether or not a procurement is a **covered procurement**. An important difference between the requirements below and the usual valuation requirements under the Treasurer's Instruction is that taxes or charges, including GST, are to be taken into account.

Section 2 Key principles / general obligations

subsection 2.3 (Rules of Origin)

Rules of origin are the criteria used to determine the national source of a product.

Section 3 Procurement methods

subsection 3.1 (Procurement method available)

Open tendering is the default procurement method. Where one of the alternative methods is used, the specific rules applicable to that method are to be applied.

subsection 3.3 (Establishing a multi-use list)

Inclusion on a **multi-use list** may be used either as a condition for participation in an **open tender** OR as the basis for selecting participants to approach directly as part of a compliant **selective tender**.

In Tasmania, **multi-use lists** may be established by **procuring entities** in relation to goods and non-construction related services. The **applicable international procurement agreements** requirements in relation to establishment and use of **multi-use lists** are **largely** the same as in the Treasurer's Instructions. However, there are some important additional requirements.

The Treasury Prequalification Schemes for Contractors and Consultants and the DSG Prequalification System for Roads and Bridges Construction Contracts also operate as **multi-use lists** and are to be established and used in accordance with these requirements.

Approaches to **suppliers** on a **multi-use list** are to be in accordance with the requirements in Treasurer's Instruction PP-2 *Procurement Processes - Market Approaches*.

subsection 3.4 (Selective tendering)

The **applicable international procurement agreements** allow for two forms of **selective tendering**:

- issuing a request for expressions of interest or a request to participate and inviting proposals from **qualified suppliers** that respond; or
- approaching **suppliers** from a properly established **multi-use list**.

Different requirements apply depending on which method is used.

Where there is an intention to approach a limited number of suppliers the criteria to select those limited suppliers is required in the notice of intended procurement. This may include category, expertise, experience, capacity etc.

In some cases, additional requirements may also apply under the Treasurer's Instructions. Refer to the Treasurer's Instructions - specifically TI PP-2 *Procurement Processes - Market Approaches*, subsection 3.5 (*Limited tendering*)

The circumstances for **limited tendering** largely mirror most (but not all) of the circumstances in which limited tendering is allowed under the Treasurer's Instructions. The matters to be taken into consideration and the requirements for Accountable Authority approval etc under the Treasurer's Instructions will continue to in addition to the **enforceable procurement provisions** in Part 2.

The Treasurer's Instructions require limited tendering to be approved by the Accountable Authority. As **procuring entities** required to comply with the Treasurer's Instructions are also required to document this approval, such documentation can be modified to meet the above requirement.

Section 4 Conditions for participation

Non-compliance with a condition for participation will disqualify a tender's response and therefore should be used sparingly. Conditions should be limited to objective conditions that can be assessed as either met or not met. Compliance is assessed at close of tender.

Section 6 Notices of intended procurement

The majority of the notice requirements are encompassed in the fields contained on the Tenders website and so publication of the 'Open for Bids' notice will generally meet the requirements. Where specific fields are not available the 'Additional Information' fields should be utilised.

It is the **procuring entity's** responsibility to ensure that all necessary information is included in any notice published (including in paper notices where paper advertising is undertaken in addition to the Tenders website).

subsection 6.4 (Notice inclusions)

The same information is to be provided in all notice formats, ie if a notice is published both on Tenders and in a newspaper, then the same information is to be included in both notices.

subsection 6.5 (Summary notices)

If a summary notice is required in accordance with subsection 6.5, please contact the Tenders Website administrator for assistance.

Section 8 Tender documentation

subsection 8.1 (Provision of tender documentation)

The requirement to provide documentation extends to persons who are not, at the time that they seek to access the documents, able to fully participate in the procurement – ie such as those not yet prequalified to participate.

Section 9 Treatment of tenders, awarding contracts and post award information

The 'Awarded Contract' notice required to be published on the Tenders website can be used for the publication of the required information.

Under the Treasurer's Instructions, an Awarded Contract notice is required to be published within 10 days of the contract being awarded - as such, should the requirements of the Treasurer's Instructions be met, the enforceable procurement provision will also be met.

Section 10 Miscellaneous

subsection 10.1 (Domestic Review / complains and challenges)

Under the *Government Procurement Review (International Free Trade Agreements) Act 2019*, a **supplier** is able to raise a complaint where:

- a relevant government agency has engaged, is engaging, or is proposing to engage in conduct in contravention of the enforceable procurement provisions in Part 2 of this publication; and
- the **suppliers'** interests are affected by conduct or proposed conduct.

The Act:

- requires the agency to suspend the procurement process in some circumstances, investigate and prepare a report in relation to the complaint; and
- allows complainants to apply to the Supreme Court of Tasmania for injunctive relief or compensation orders.

Refer to the Purchasing website for additional information.

subsection 10.3 (Disclosure of information)

A party, procuring entities, authorities and review bodies are not required to disclose confidential information if that disclosure would impede law enforcement; might prejudice fair competition between **suppliers**; would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or would otherwise be contrary to the public interest.

Also, a Party is not required to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests.

Procuring entities may be required to cooperate with either the Department of Treasury and Finance or a relevant Commonwealth Government department in relation to the provision of information relating to specific procurements, upon a request from another party to a free trade agreement. The type of information that may be required could include awarded contract details and to the extent necessary and without disclosing confidential information, information on the characteristics and relative advantages of the successful tender and on the contract price.

subsection 10.5 (Use of electronic means)

The Tenders Website meets the requirements of sub-subsection 10.5.

Appendix 1 Dictionary

The terminology used in the free trade agreements will not always align with the terminology used by **procuring entities** in their day-to-day procurement activities. **Procuring entities** should refer to the dictionary for **applicable international procurement agreements** meanings.

Appendix 3 Thresholds

The thresholds are adjusted every two years. Information on previously applicable threshold values can be obtained from the Department of Treasury and Finance, Procurement Risk and Contract Management Branch (email to: purchasing@treasury.tas.gov.au).

Appendix 4 Exclusions and exceptions

The exclusion relating to 'expert or neutral persons' applies only to individuals and only where their appointment relates to current or anticipated litigation or a dispute. It does not, for example, apply to legal services generally, or legal services from a law firm, even if related to a current or anticipated litigation or dispute.

Public employment contracts and the acquisition or rental of land, existing buildings or other immovable property or the rights thereon are not goods or services and therefore not **covered procurement**.

Is your agency / organisation a **procuring entity**?

Yes

- The entities required to comply with the FTAs are listed in the original FTAs and updated as necessary to reflect administrative changes.
- Refer Appendix 2.

Is the estimated value of the procurement equal to, or in excess of, the relevant thresholds?

Yes

- The thresholds are in Appendix 3.
- The estimated value is to be determined at the time of publication of a **notice of intended procurement** and in accordance with Section 1 (1.2)
- The thresholds change every two years.

Does an exclusion apply?

No

- The exclusions are set out at Appendix 4.

The procurement is a **covered procurement**.

