

Procurement

Better Practice Guidelines (COVID-19 Emergency Procurement Measures)

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Title: Procurement Better Practice Guidelines (COVID-19 Emergency Procurement Measures)

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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.

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

This *Better Practice Guideline* provides information to assist in understanding Treasurer's Instruction PF-7 *Procurement Framework - COVID-19 Emergency Procurement Measures*.

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).

Background

The procurement Treasurer's Instructions detail the high-level principles for all Government procurement as well as prescribe high-level processes deemed best practice. While these policies and processes help ensure integrity, probity, transparency, accountability and value for money in government spending of public monies, the standard procurement process requirements may represent an impediment to procurement:

- requiring urgent delivery and responses; or
- related to programs delivered by the Government to stimulate the economy or to support business and persons impacted by due to Novel Coronavirus (COVID-19).

COVID-19 Procurement Measures

What procurement does the Instruction apply to?

Treasurer's Instruction PF-7 (version 2) applies to procurement commenced on or after the 20 November 2020 and is issued to enable an Accountable Authority to approve modified procurement and contracting processes in connection with Government measures in response to COVID-19.

Procurement not covered by TI PF-7 is to be undertaken in the usual manner and in accordance with all relevant TIs.

Application of the Instruction

Covered procurement v Non-covered procurement

Clause 1.1.1 of PF-7 applies to all procurement, including *covered procurements*, and allows an Accountable Authority to approve modifications to procurement and contracting processes for urgent procurement of goods and services or works related to the implementation of emergency measures, in connection with COVID-19, including measures that are necessary to protect human life or health, public morals, order or safety.

Clause 1.1.2 of PF-7 applies only to procurement that is not *covered procurement*, and allows for approval of modified procurement and contracting processes for goods, services or works, in connection with programs delivered by the Government to stimulate the economy or to support businesses and persons impacted by COVID-19.

Covered procurement is defined in PF-6 and is any procurement where compliance with an *applicable international procurement agreement* obligation is required. The circumstances where a procurement

will be covered by such an agreement are set out in Part 2, Section 1, subsection 1.1 of the guideline, *International Procurement Obligations*.

Guidance

In determining the appropriate approach to undertake when conducting procurement pursuant to TI PF-7, common sense and good judgement should be exercised and decisions should be practical, balanced, non-discriminatory, fair to suppliers and fiscally responsible. Appropriate risk management processes should be applied.

The Instruction provides an Accountable Authority with the flexibility to vary their procurement and contracting methods or individual process requirements, for example by:

- using direct and limited tendering methods rather going out to a tender in cases where otherwise the value of the procurement would have required an open process (although where competition exists, consideration should be given to limited tendering as a means of meeting requirements in clause 1.2 of the Instruction);
- using contractors or consultants other than those on Treasury's prequalification registers or those that do not meet specific threshold levels; and
- using procurement and contract documentation that is otherwise mandated by the Instructions.

For clarity, while every effort should be made to ensure that maximum opportunities are made available for local suppliers, requirements of the Buy Local Policy and requirements for pre-procurement industry consultation may be varied in circumstances where the Accountable Authority is of the view that this will expedite procurement delivery.

However, requirements that do not affect expeditious delivery of procurement outcomes or identification of a suitable provider should remain in place where appropriate. For example: established whole of government common-use contracts should generally continue to be used where they apply given that the procurement processes for those contracts have already been completed and principal-nominated insurance and security requirements should continue to be applied in relation to relevant works contracts to protect the Crown.

Agencies should be aware that stepping outside the standard procurement process requirements might give rise to a higher risk of allegations of conflict of interest and corruption, making it important to ensure openness and transparency to maintain accountability and public confidence. Accountable Authorities should therefore ensure that appropriate processes, checks and balances are in place to mitigate these risks and an appropriate level of documentation is retained to justify procurement decisions.

To ensure openness and transparency, written contracts entered into under these measures should not contain confidentiality provisions unless their negotiation and inclusion would unnecessarily delay the procurement process.

Reporting of contracts containing confidentiality provisions should continue to occur.

Reporting

No special reporting requirements are required in relation to procurement undertaken pursuant to TI PF-7. The Instruction relaxes the 10 working-day time period for reporting by allowing reporting to occur within a reasonable time period. Reporting requirements contained in the *International Procurement Obligations* publication, where applicable should still be met.

Legislative requirements

Regardless of the streamlining of procurement processes, agencies and their contractors are required to continue to comply with relevant legislation. For example:

- agencies and contractors must continue to meet their occupational health and safety requirements;
- contractors must apply award wages and comply with legislated employment conditions (such as workers' compensation, long service leave provisions etc); and
- for works projects, agencies must continue to meet the conditions and standards set by the Building Practitioners' Accreditation Scheme; contractors and consultants must be appropriately qualified; works must comply with the requirements of the *Building Act 2000* and associated regulations; and the legislative requirements of the *Public Works Committee Act 1914* must be met.

Need more information?

If you have any questions, please contact the Department of Treasury and Finance, Procurement, Risk and Contract Management Branch. The Procurement, Risk and Contract Management Branch may be contacted on (03) 6145 5011 or by emailing purchasing@treasury.tas.gov.au.

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