

Treasurer's Instruction No	1202
Title	International Obligations: building and construction/roads and bridges
Effective date	1 January 2016
Objective and Background	Provides instruction and guidance on Cooperative Arrangements and Free Trade Agreements.
Version Number	11

Black letter (or bold) items within these Instructions are mandatory and other plain font items are instructional or for the purpose of providing guidance only.

COOPERATIVE ARRANGEMENTS

The Tasmanian Government, together with the Australian Government and all other State and Territory Governments, is bound by the *Australia and New Zealand Government Procurement Agreement (ANZGPA)*.

- (1) **In accordance with the ANZGPA, agencies must not give preference to Tasmanian suppliers over those from another Australian jurisdiction or New Zealand. Australian and New Zealand suppliers must be given equal consideration and opportunities to contract for the supply of goods and services (including construction and related services) to the State Government in relation to all procurements.**

The ANZGPA is a cooperative agreement which applies to all procurements undertaken by agencies regardless of value.

Further information on the ANZGPA can be located on the [Purchasing website - Buying for Government \(Free Trade and other Co-operative Agreements\)](#).

FREE TRADE AGREEMENTS

The Tasmanian Government, together with the Australian Government and all other State and Territory Governments, is bound by procurement obligations contained in a number of free trade agreements. Those agreements are the:

- (1) *Australia – United States Free Trade Agreement (AUSFTA)*;
- (2) *Australia – Chile Free Trade Agreement (ACFTA)*; and
- (3) *Korea – Australia Free Trade Agreement (KAFTA)*; and
- (4) *Japan – Australia Economic Partnership Agreement (JAEP)*.

All relevant free trade agreement obligations are incorporated into the procurement policy framework as expressed in this and related Treasurer's Instructions and in the *Free Trade Agreements Guideline*. The Guideline can be located on the [Purchasing Website - Buying for Government \(Publications\)](#).

- (2) **In accordance with the terms of the free trade agreements, in any procurement governed by the agreements:**
- (a) **agencies must treat the goods and services (where services includes construction services, as defined in the terms of the free trade agreements) of a party to a free trade agreement and the suppliers of goods and services (including construction) of a party to a free trade agreement on a basis which is no less favourable than the most**

favourable treatment provided by the agency to goods and services or suppliers of goods and services (including construction) from Tasmania, Australia or New Zealand; and

- (b) an agency must not treat a locally established supplier less favourably than other locally established suppliers on the basis of degree of affiliation or ownership with, or by, a party to a free trade agreement nor discriminate against a locally established supplier on the basis that the goods or services (including construction) offered by that supplier for a particular procurement are goods and services of a party to a free trade agreement.**

The requirement for non-discriminatory treatment also applies to orders under contracts awarded as a result of a procurement that was impacted by a free trade agreement (ie when entering into a purchasing order).

- (3) If it is determined that a procurement falls within the scope of a free trade agreement by which the Tasmanian Government is bound, then, in addition to the requirements under the Treasurer's Instructions, relevant requirements in the *Free Trade Agreements Guideline* must also be followed.**

A procurement is covered by a relevant free trade agreement if it is:

- a procurement by any contractual means, including purchase, rental or lease, with or without an option to buy, build-operate-transfer contract and public works concession contract;
- for which the estimated dollar value of the procurement is equal to or in excess of the specified threshold set out below;
- conducted by a covered entity (ie generally speaking, these are inner-budget agencies or entities required to comply with the Treasurer's Instructions); and
- the procurement is not otherwise excluded.

A build-operate-transfer contract and public works concession contract means 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, an agency grants 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.

Threshold

From 1 January 2016 to 31 December 2017, the provisions of relevant free trade agreements apply to building and construction procurement (including roads and bridges) where the procurement has an estimated dollar value equal to, or in excess of, \$8.652million (inclusive of GST). The estimated dollar value of a procurement is to be ascertained in accordance with Instruction 1204.

Information on threshold values prior to 1 January 2016 can be obtained from the Department of Treasury and Finance, Procurement and Property Branch.

Excluded procurements

Excluded procurements are:

- non-contractual agreements or any form of assistance including grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, cooperative agreements and sponsorship arrangements;
 - procurement of goods and services (including construction) by an agency from other Tasmanian Government entities and provision of goods or services by or between a Tasmanian inner-Budget agency and Tasmanian local government;
 - purchases funded by international grants, loans, or other assistance, where the provision of such assistance is subject to conditions inconsistent with the binding free trade agreements;
 - purchases funded by grants and sponsorship payments from persons not listed in the binding free trade 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 Australia, for consumption outside the territory of Australia;
 - 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 health and welfare services;
 - procurement of education services;
 - procurement of advertising services; and
 - procurement of plasma fractionation services.
- (4) Agencies are not to prepare, design, or otherwise structure or divide a procurement, at any stage, for the purposes of avoiding the obligations of a free trade agreement.**