

<b>Treasurer's Instruction No</b>	<b>1217</b>
Title	<b>Limited tendering - Direct/limited submission sourcing: building and construction/roads and bridges</b>
Effective date	<b>30 December 2018</b>
Objective and Background	<b>Details the process for the direct/limited submission sourcing of building and construction/roads and bridges procurement where certain circumstances exist.</b>
Version Number	<b>11</b>

*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.*

- (1) **At the discretion of an agency's Head of Agency, where one or more of the specified circumstances below exist, an agency may undertake limited tendering by either directly sourcing or seeking limited submissions in relation to building and construction/roads and bridges procurement.**

Approval by the Head of Agency must be sought and granted in accordance with clauses (3) and (4) below.

**For procurements not impacted by a free trade agreement, at least one of the following circumstances must exist:**

- (a) **where, in response to an issued open for bids notice, invitation to participate or invitation to tender:**
- (i) **no responses were submitted;**
  - (ii) **no responses were submitted that conformed to the essential requirements in the tender documentation; or**
  - (iii) **no suppliers satisfied the conditions for participation, and the agency does not substantially modify the essential requirements of the procurement; or**
- (b) **where the services can be supplied only by a particular supplier and no reasonable alternative or substitute services exist for the following reasons:**
- (i) **the requirement is for works 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; or**
- (c) **for additional deliveries of services by the original supplier or authorised representative that were not included in the initial procurement if a change of supplier for 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, or due to conditions under original supplier warranties; and

- (ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity; or
- (d) where an agency procures a prototype or a first 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. This does not include quantity production or supply to establish commercial viability or to recover research and development costs; or
- (e) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the agency, the services could not be obtained in time using an open or selective tender. For the purposes of this circumstance, a selective tender is one conducted using the processes set out in Instruction I208; or
- (f) 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
- (g) 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 Treasurer's Instructions; and
  - (ii) the contest is judged by an independent jury with a view to a design contract being awarded to the winner; or
- (h) the work is of a specialist nature which a limited number of suppliers are capable of carrying out; or
- (i) the circumstances justify limiting the number of suppliers.

For procurement impacted by free trade agreement obligations, refer to the publication, *International Procurement Obligations* for the circumstances in which limited tendering may be approved.

- (2) **Limited tendering should only be considered following full and proper consideration and must not be used to avoid undertaking a competitive procurement process.**

It is expected that direct/limited submission sourcing circumstances will rarely arise.

- (3) **Prior to undertaking limited tendering agencies must seek written approval from their Head of Agency.**

**The request must contain sufficient information to justify the use of a direct/limited submission sourcing process rather than the usual quotation or tendering process including, at a minimum:**

- (a) details of the research undertaken to identify and justify that one or more of the direct/limited submission sourcing circumstances referred to in clause (1) exists;
- (b) evidence of value for money considerations;
- (c) details of the identified supplier/s; and
- (d) the estimated total value of the procurement.

In addition, for requests under clause (1)(b) the evidence for consideration must also include details of the market research undertaken to determine that the required services can be supplied only by the identified supplier and that no reasonable alternative or substitute services exist.

Market research should include:

- referral to industry specific articles and publications; databases and registers of suppliers; and the *Yellow Pages*;
- internet and other searches; and
- consultation with counterparts in other jurisdictions.

At a minimum, market research should include the Australian (ie all states and territories) and New Zealand markets regardless of the value of the proposed procurement. Where a free trade agreement applies (refer Instruction 1202), research should also include the market of all countries party to those free trade agreements.

- (4) **The approval of the Head of Agency must be granted in writing prior to commencing negotiations or seeking submissions. Head of Agency approval cannot be granted retrospectively.**

Commencing 'negotiations' does not preclude an agency from conducting market research.

Agencies should establish internal processes for seeking Head of Agency approval for direct/limited submission sourcing procurements. For example, agencies may consider it appropriate to forward requests through the Procurement Review Committee.

- (5) **The authority to determine whether a direct/limited submission sourcing circumstance exists and to approve the undertaking of a direct/limited submission sourcing process cannot be delegated by the Head of Agency to other officers.**
- (6) **Agencies must prepare and maintain appropriate and auditable documentation regarding the approval of each direct/limited submission sourcing procurement process. Specific audit requirements are contained in Instruction 1214.**

For procurement impacted by free trade agreement obligations, refer to the publication *International Procurement Obligations*, for additional record keeping and reporting requirements.

- (7) **All other relevant mandatory requirements of the Treasurer's Instructions in relation to procurement continue to apply.**

These requirements include but are not limited to:

- that the procurement must be undertaken in a manner that is consistent with the general intent of Government policy and the principles contained in Instruction 1201;
- reporting under Instructions 1212 and 1213 ; and
- the Crown's confidentiality requirements contained in Instructions 1401, 1402 and 1229.

Further information on Government procurement processes is located on the [Purchasing website - Buying for Government \(Building and Construction\)](#).

Further information on the application of this Instruction can be found in the *Guidelines for Direct/Limited Submission Sourcing and TI 1115 Contract Extensions* which can be located on the [Purchasing website - Buying for Government \(Publications\)](#).