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| Treasurer's Instruction No | 1217 |
| Title | Direct/limited submission sourcing: building and construction/roads and bridges |
| Effective date | 1 July 2015 |
| Objective and Background | Details the process for the direct/limited submission sourcing of building and construction/roads and bridges procurement where certain circumstances exist. |
| Version Number | 8 |

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.

For the purposes of this Instruction only, the Head of Agency for the Tasmanian Health Service (is the Secretary of the Department of Health and Human Services.

- (I) At the discretion of an agency's Head of Agency, where one or more of the specified circumstances below exist, an agency may directly source or seek limited submissions in relation to building and construction/roads and bridges procurement without the need to seek quotes or call for tenders in accordance with Instructions 1206, 1207, 1208 or 1216(6).**

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

At least one of the following circumstances must exist:

- (a) where, in response to a prior notice, invitation to participate or invitation to tender:**
- (i) no tenders were submitted;**
 - (ii) no tenders were submitted that conform 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 are intended either as replacement parts, extensions or continuing services for existing equipment, software, services or installations, where a change of supplier would**

compel the agency to procure services that do not meet requirements of interchangeability with existing equipment; 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; or
- (e) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseen 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 1208 such as a multi-use list, special licence or an expression of interest; or
- (f) for new construction services consisting of the repetition of similar construction services that conform to a basic project for which an initial contract was awarded following use of open tendering or selective tendering in accordance with the relevant Instruction and for which the agency has indicated in the notice of intended procurement concerning the initial construction service, that limited tendering procedures might be used in awarding contracts for those construction services; or
- (g) 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 obligations under a free trade agreement; and
 - (ii) the contest is judged by an independent jury with a view to a design contract being awarded to the winner; or
- (i) where a procurement is not impacted by a free trade agreement as set out in Instruction 1202 and:
 - (i) the work is of a specialist nature which a limited number of suppliers are capable of carrying out; or
 - (ii) the circumstances justify limiting the number of suppliers.

Where direct sourcing or seeking limited submissions is approved, and the number of suppliers invited to tender is limited, a tender may be invited without public advertisement or a supplier may be engaged without any other tenders being invited.

- (2) **Direct/limited submission sourcing processes should only be considered following full and proper consideration and must not be used to avoid undertaking the usual competitive procurement process.**

The 'usual' competitive procurement processes are those set out in Instructions 1206, 1207, 1208 or 1216(6).

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

- (3) Prior to undertaking direct/limited submission sourcing 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 tender 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 must include the Australian (ie all states and territories) and New Zealand markets regardless of the value of the proposed procurement. In addition, where a free trade agreement applies (refer Instruction 1202), research must 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.**

In addition, for each procurement that is impacted by a free trade agreement (refer to Instruction 1202) and awarded through this process, agencies must prepare, and file within the agency's central filing system, a written report that includes:

- (a) the value and kind of goods or services procured; and
 - (b) a statement indicating the circumstances and conditions that justify the use of a procedure other than those set out in Instructions 1207, 1208 or 1216(6).
- (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 \(Publications\)](#).