

Treasurer's Instruction No	1224
Title	Procurement of Legal Services: building and construction/roads and bridges
Effective date	1 August 2018
Objective and Background	Provides instruction and guidance on the procurement of legal services.
Version Number	6

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) This Instruction applies only to the procurement of building and construction and roads and bridges and is to be read in conjunction with other Instructions relating to such procurements which are contained in the 1200 series of the Treasurer's Instructions.**

Further information on building and construction procurement, including a definition of "building and construction" and "roads and bridges" and information on the types of services that fall under these categories is located on the [Purchasing website - Buying for Government](http://www.purchasing.tas.gov.au) (www.purchasing.tas.gov.au).

For information in relation to procurement of goods and non-construction related services, refer to the 1100 series of the Treasurer's Instructions.

- (2) Agencies must refer all requests for legal advice, civil litigation services and commercial and conveyancing legal services to Crown Law.**

Crown Law is comprised of the Office of the Solicitor-General, the Office of the Crown Solicitor and the Office of the Director of Public Prosecutions. The Office of the Solicitor-General is responsible for the provision of legal advice to Ministers, agencies and other government instrumentalities, while also undertaking Constitutional litigation on behalf of the Crown.

The advice, when obtained from the Solicitor-General, represents the Government's view of the subject matter of the advice and is to be followed unless Cabinet directs otherwise or it is held to be incorrect by a court of competent jurisdiction.

Information on the services provided by Crown Law is available on the Crown Law website. Services are provided free of charge to agencies (excluding Statutory Authorities). There are certain circumstances where some charges may apply, such as when there are recovery rights from third parties – Crown Law will advise agencies when this may apply.

- (3) Crown Law will determine whether its officers can provide the required legal services. All legal instructions must be provided by, or through, Crown Law unless otherwise agreed in writing by Crown Law.**

If Crown Law determines that external advice is required, the matter will be referred to a suitable legal consultant after consultation with the instructing agency. The legal services will be sourced through an appropriate quotation or selective tender process conducted by Crown Law.

Crown Law is best placed to source external specialist legal services on behalf of Government given its knowledge of the legal market. Quotation and selective tender

processes are viewed as the most efficient selection methods, given the highly specialised nature of the work to be outsourced, the short timeframes often involved, the need to avoid conflicts of interest, and frequently, the need to preserve the Crown's confidentiality.

Having determined that its officers cannot provide the required legal services, Crown Law will use the following process to engage external legal services:

The Solicitor-General, Crown-Solicitor, or Director of Public Prosecutions will:

- in consultation with the instructing agency, develop a brief of the legal services required;
- using professional judgement and understanding of the market place, identify potential service providers with a view to:
 - avoiding any conflict of interest;
 - preserving confidentiality; and
 - securing the best capability for the work at reasonable cost commensurate to the nature of the required services.
- conduct a competitive selection process between the potential service providers identified, by either a quotation, or a selective tender process;
- evaluate submissions, select a preferred service provider, document outcomes and provide a copy of those outcomes to the instructing agency;
- obtain the instructing agency's approval to engage the preferred service provider; and
- engage the successful service provider on behalf of the Crown, as represented by the instructing agency.

An exemption from the requirement to source legal services through a quotation or selective tender process can be requested by Crown Law on behalf of the agency, or by the agency with the agreement of Crown Law, and can only be approved by the Secretary of the Department of Treasury and Finance, or other authorised delegate.

The Solicitor-General is exempt from the above process, unless the procurement of legal services is such as to be impacted by a free trade agreement (refer to Instruction I202), where:

- in a major, urgent and/or highly confidential matter, expertise is required which is not available internally or where it would be inappropriate to source such expertise internally; and
- the conduct of a quotation or tender process would compromise the provision of good, timely advice.

The Director of Public Prosecutions is exempt from the above process, unless the procurement of legal services is such as to be impacted by a free trade agreement (refer to Instruction I202), in instances where:

- through emergency (such as illness of in-house counsel) outside counsel has to be retained to take over a particular case or list of cases;
- in a major matter, special expertise is required which is not available in house; or

- where interstate agents or barristers are required and Court deadlines do not allow enough time to conduct a competitive process.

Crown Law will charge the instructing agency at cost for the legal services being provided by external legal consultants.

- (4) Agencies must not directly engage external counsel or commercial legal services without the written agreement of Crown Law.**
- (5) Agencies must report any external legal consultants engaged for them by Crown Law in accordance with Instructions 1212 and 1213.**