

Treasurer's Instruction No	1207
Title	Major Works Procurement: building and construction/roads and bridges
Effective date	22 December 2006
Objective and Background	Provides instructions on the procedures that agencies must follow for major works procurement for building and construction/roads and bridges.
Version Number	2
Last Reviewed Date	November 2006

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 Instructions 1201 to 1229.**

Further information, 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 in the Buying for Government section of www.purchasing.tas.gov.au.

Additional information is also provided in the *Procurement Practice Manual – Contract Documentation, Delegation and Risk for Major Works*, which is available in the Buying for Government section of www.purchasing.tas.gov.au under Resources (Publications).

Refer to Instructions 1101 to 1124 for information in relation to procurement of goods and non-construction related services.

PROCUREMENT PROCESSES, PRE-QUALIFICATION & DOCUMENTATION

- (2) **All building and construction works valued at \$100 000 or over and all road and bridge works valued at \$250 000 or over must be treated as major works.**

All building and construction works valued under \$100 000 and all road and bridge works valued under \$250 000 should be treated as minor works. Refer to Instruction 1206 for further information on minor works.

- (3) **Open tenders must be called for major works, unless an exemption has been granted under Instruction 1217.**

Advertising requirements are set out in Instruction 1209.

- (4) **Agencies must ensure that any major works contracts are awarded to contractors within the appropriate pre-qualifications threshold, where pre-qualified contractors exist.**

Building and Construction tender documentation may be provided to contractors that are not yet pre-qualified. However, contractors must be pre-qualified by the closing date for

the tender to enable their submission to be considered for evaluation given that pre-qualification is a condition for participation. As pre-qualification of contractors may take a number of weeks to finalise, agencies should factor this timeframe into their procurement plan where it is likely that contractors that are not pre-qualified are likely to submit tenders.

The Department of Treasury and Finance has developed pre-qualification criteria for building and construction contractors. A list of pre-qualified building and construction contractors is located at www.tenders.tas.gov.au, under Tools and Help, Agency eTendering Admin, Pre-qualified Contractors and Consultants. An eTendering login is required to access this database. Further information on the Pre-qualified Contractor Scheme including information on the pre-qualification criteria, can be found in the Buying for Government section of www.purchasing.tas.gov.au.

The Department of Infrastructure, Energy and Resources (DIER) has developed pre-qualification criteria for roads and bridges contractors. For roads and bridges major works, tender documentation is to be issued only to pre-qualified contractors.

Further information on the use of the DIER pre-qualified contractors is available from Tony Hodgson at tony.hodgson@dier.tas.gov.au or on 6233 2176.

- (5) **Agencies must ensure that where sub-contractors are to be engaged by a contractor and the value of the work to be undertaken by the sub-contractor is valued at \$100 000 or more for building and construction or \$250 000 or more for roads and bridges, the sub-contractors, where an appropriate pre-qualification category exists, must also be pre-qualified to the appropriate levels.**
- (6) **Agencies must not package works with the intention of circumventing the pre-qualification thresholds.**
- (7) **Where applicable pre-qualification categories do not exist, agencies must undertake a full tender process that ensures that the recommended tenderer possesses the technical and financial capability, as well as other capabilities that the agency considers to be a relevant requirement for the project.**
- (8) **Where an agency wishes to engage a contractor who is not pre-qualified, and pre-qualified contractors are registered for the particular work that is being undertaken, an exemption from the requirement to use pre-qualified contractors may be approved by the Secretary of the Department of Treasury and Finance.**

Such an exemption will only be approved in exceptional circumstances, where conclusive justification of the request is provided. Retrospective exemptions will not be granted.

All exemptions granted, including the reasons for the granting of the exemption, will be disclosed in the Department of Treasury and Finance Annual Report.

- (9) **For all building and construction major works contracts, except those where the use of AS 4300 - 1995 is appropriate, it is mandatory to use AS 2124 - 1992, *General Conditions of Contract* and the Request for Tender (Building and Construction version) document approved by Crown Law.**

AS 2124 - 1992 *General Conditions of Contract* is available to download from the SAI Global web site at www.sai-global.com.

AS 4300 - 1995, *General Conditions of Contract for Design and Construct*, may be used in appropriate circumstances. It is recommended that Crown Law advice be sought in relation to how this document should be amended to comply with Government procurement requirements.

The major works Request for Tender (building and construction version) document is available to download from the Buying for Government section of www.purchasing.tas.gov.au under Resources (Publications). Standards Australia has produced the *General Conditions of Contract AS 2124 - 1992 User Guide SAA HB 42 - 1992*. All parties involved in the contract, as well as agency project managers, should familiarise themselves with this document.

Agency officers should also familiarise themselves with the Procurement Practice Manual – Contract Documentation, Delegation and Risk for Major Works, which is available in the Buying for Government section of www.purchasing.tas.gov.au under Resources (Publications).

- (10) **For all roads and bridges major works contracts, except those where the use of AS 4300 - 1995 is appropriate, it is mandatory to use AS 2124 - 1992, *General Conditions of Contract* and the appropriate approved Preliminaries/Request for Tender document.**
- (11) **All major works projects must be referred to an agency's Procurement Review Committee and approved by the Head of Agency, prior to a contract being awarded.**
- (12) **Agencies must ensure that persons submitting bids are dealt with fairly and equitably during the tender process.**
- (13) **The Tender documentation must contain all the information necessary to enable potential suppliers to prepare appropriate submissions in response.**
- (14) **The specifications must be designed not to restrict competition, reflect bias to any brand, product or contractor, or act as a barrier to the consideration of any alternative.**
- (15) **Submissions for major works tenders must be received in accordance with Instruction 1209.**
- (16) **Submissions for major works must be evaluated in accordance with Instruction 1210 and any contract awarded in accordance with Instruction 1211.**

AUSTRALIA - UNITED STATES FREE TRADE AGREEMENT (AUSFTA) PROCUREMENTS

- (17) **Any building and construction or roads and bridges procurement that is impacted by the *Australia - United States Free Trade Agreement* (AUSFTA) must, in addition to the requirements above, comply with the requirements set out in the *Australia - United States Free Trade Agreement* (AUSFTA) Guidelines.**

The AUSFTA may apply to building and construction/roads and bridges procurements where the value of the procurement is equal to or in excess of \$9.933 million (inclusive of GST). Further information regarding the AUSFTA can be found in Instruction 1202.

The requirements of the *Australia - United States Free Trade Agreement (AUSFTA) Guidelines* relate to matters such as the length of time a tender is advertised and the information to be provided to tenderers and generally accords with good practice procurement. The Guidelines can be found in the Buying for Government section of www.purchasing.tas.gov.au under Resources (Publications).

CONFIDENTIALITY IN THE PROCUREMENT PROCESS AND IN RELATION TO CONTRACTS

Agencies should refer to Instructions 1229 and 1401.