

Treasurer's Instruction No	1109
Title	Goods and Services Procurement Documentation and Receipt and Opening of Submissions
Effective date	22 December 2006
Objective and Background	Provides instruction on the quotation, tender and contract documentation to be used by agencies in the procurement of goods and services and the process to be adopted in relation to the receipt and opening of procurement documentation – formerly Instruction 1308.
Version Number	5
Last Reviewed Date	December 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 goods and services and is to be read in conjunction with Instructions 1101 to 1124.**

Further information, including a definition of “goods and services”, can be found on the Buying for Government section of www.purchasing.tas.gov.au.

Refer to Instructions 1201 to 1229 for information in relation to procurement of building and construction and roads and bridges.

Examples of good practice that would assist agencies in meeting the mandatory requirements of this Instruction are contained in the *Quotation Process Checklist* or the *Tender Process Checklists*. These can be located on the Buying for Government section of www.purchasing.tas.gov.au under Resources (Checklists). Additional information can also be located on that web site under Goods & Services.

SPECIFICATIONS

- (2) **The specifications for the procurement must not restrict competition, reflect bias to any brand, or act as a barrier to the consideration of any alternatives.**

Before finalising the specification, it is suggested that it be reviewed by ICNTAS to ensure that it does not unnecessarily preclude Tasmanian businesses from bidding. Further information on ICNTAS can be found in the Buying for Government section of www.purchasing.tas.gov.au, under Purchasing Framework (Purchasing Policies), or at www.icntas.org.au.

- (3) **The specifications for the procurement must address value for money considerations.**

Refer to Instruction 1101 for further information on value for money.

- (4) **Where a procurement is impacted by the *Australia - United States Free Trade Agreement* (AUSFTA), the specifications must comply with the requirements for**

technical specifications set out in the *Australia - United States Free Trade Agreement (AUSFTA) Guidelines*.

CONDITIONS OF QUOTATION/TENDER AND CONDITIONS OF CONTRACT

(5) Where:-

- (a) an agency intends to limit the submission of tenders to suppliers the agency has determined have satisfied specified conditions for participation (eg pre-qualification); and**
- (b) the procurement is one that is impacted by the *Australia - United States Free Trade Agreement (AUSFTA)*;**

the agency must comply with the *Australia - United States Free Trade Agreement (AUSFTA) Guidelines* requirements.

The Guidelines require agencies to allow suppliers time to pre-qualify. Further information is contained in the Guidelines which can be found in the Buying for Government section of www.purchasing.tas.gov.au, under Resources (Publications).

(6) In relation to procurements undertaken by way of a Tender process, agencies must use only Conditions of Tender and Contract that have been approved by the Crown Solicitor.

The Request for Tender (RFT) Conditions of Tender and Contract documentation (Goods; Services; Goods and Services; and Information Technology) issued by the Department of Treasury and Finance, have been approved by the Crown Solicitor. Agencies are encouraged to use the Treasury proforma documents that are available from the Buying for Government section of www.purchasing.tas.gov.au, under Resources (Forms).

The Treasury Request for Tender proforma documentation has been written as an entire document and the individual parts, such as the Conditions of Contracts, cannot be used in isolation. If an agency has undertaken a procurement without utilising the proforma RFT documentation and requires Conditions of Contract to be prepared, it should contact the Crown Solicitor for advice and approval of any documentation. The Conditions of Contract contained within the proforma RFT documentation cannot be utilised where the remaining components of the proforma RFT documentation have not been used as the documents are interdependent.

(7) If an agency chooses to materially amend the RFT documentation issued by the Department of Treasury and Finance and already approved by the Crown Solicitor, the amended documentation must:

- (a) include all mandatory clauses listed in clause (9) below; and**
- (b) be submitted for the Crown Solicitor's approval.**

To enable the Crown Solicitor's office to respond quickly, it is recommended that agencies mark up any changes made to the standard documents. The Crown Solicitor will then be able to review the marked up documentation in a shorter time frame, and

at a reduced cost to the agency, than would be otherwise possible if changes are not identified.

(8) If an agency chooses to prepare its own Conditions of Tender and/or Contract, the documentation must:

- (a) include all of the mandatory clauses listed in clause (9) below; and**
- (b) be submitted for the Crown Solicitor's approval.**

Further information on the steps involved in seeking the Crown Solicitor's approval of Conditions of Tender and Contract are available on the Buying for Government section of www.purchasing.tas.gov.au.

(9) The following clauses must be included in Request for Quotation (RFQ) and Request for Tender (RFT) documentation:

- (a) a waiver of rights in respect of a future scheme in force under the *Professional Standards Act 2005*;**

This clause provides for the waiver of future rights that may be available to suppliers under a future scheme in force under the *Professional Standards Act 2005* for limiting the occupational liability of members of an occupational association. For equivalent wording see clause 6 of the Important Information for Tenders (RFT: Goods and Services Crown Solicitor's proforma) together with clause 1 and clause 23 of the Conditions of Tender, Crown Solicitor's proforma RFT: Goods and Services.

- (b) if appropriate, a clause requiring a contractor to obtain an approval for a higher maximum amount of liability than would otherwise apply under the *Professional Standards Act 2005*;**

The *Professional Standards Act 2005* provides for the limitation of liability of members of occupational associations in certain circumstances. Under section 27 of the Act however, the Crown may require a member to obtain an approval for a higher maximum amount of liability than would otherwise apply. Drafters should therefore always consider whether such an approval should be required.

For equivalent wording see clause 6 of the Important Information for Tenders (RFT: Goods and Services Crown Solicitor's proforma) together with clause 1 and clause 23 of the Conditions of Tender, Crown Solicitor's proforma RFT: Goods and Services.

- (c) if appropriate, a requirement for Year 2000 Compliance (for all contracts in relation to information technology);**

This clause is still relevant and is to be included in all documentation involving the purchase of information technology as some critical Year 2000 dates have not yet passed, and some applications may be based on operating systems that have been patched to keep them running while they are converted to Year 2000 compliant platforms.

For equivalent wording see clause 20.4 of the Conditions of Tender, Crown Solicitor's proforma RFT: Goods and Services.

- (d) details of the supplier information that will be disclosed under Instruction 1110 and 1111 (for contracts in relation to procurements valued at and in excess of \$50 000 excluding GST);**

For further information see Instruction 1111. For equivalent wording see clause 5.5 of the Conditions of Tender, Crown Solicitor's proforma RFT: Goods and Services and/or Instruction 1111(4).

- (e) details of the agency's complaints process;**

For further information see Instruction 1117. For equivalent wording see clause 22 of the Conditions of Tender, Crown Solicitor's proforma RFT: Goods and Services.

- (f) the entitlement of unsuccessful persons submitting quotations or tenders to be debriefed; and**

For equivalent wording see clause 21 of the Conditions of Tender, Crown Solicitor's pro-forma RFT: Goods and Services.

- (g) for any procurement process commenced on or after 15 February 2007, information on the Government's policy on confidentiality;**

The commencement of a procurement is the date that a Request for Tender/Quotation, Expression of Interest or Request for Proposal is issued. For further information see Instructions 1401 and 1124. For equivalent wording see the Conditions of Tender, Crown Solicitor's proforma RFT: Goods and Services.

- (h) if appropriate, advice that dumped goods will not be accepted.**

Additional information on what goods may be at risk of being dumped goods, is available on the Buying for Government section of www.purchasing.tas.gov.au under Purchasing Framework (Purchasing Policies). For equivalent wording see clause 20.5 of the Conditions of Tender, Crown Solicitor's proforma RFT: Goods and Services.

A clause providing information on the Government's policy to enhance opportunities for local business, and the Government's participation in the *Australian and New Zealand Government Procurement Agreement* (ANZGPA) and the *Australia - United States Free Trade Agreement* (AUSFTA) should be considered for inclusion, where appropriate, in the Request for Quotation and Request for Tender documentation.

For equivalent wording see clauses 20.1, 20.2 and 20.3 of the Conditions of Tender, Crown Solicitor's proforma RFT: Goods and Services.

The Crown Solicitor's pro-forma RFT documentation can be found in the Buying for Government section of www.purchasing.tas.gov.au under Resources (Forms).

- (10) The following clauses must be included in all contracts awarded by an agency:**

- (a) a waiver of rights in respect of a future scheme in force under the *Professional Standards Act 2005* and as described in clause 9(a) above;**

For equivalent wording see clause 1 and clause 42 of the Conditions of Contract, Crown Solicitor's proforma RFT: Goods and Services.

- (b) **if appropriate, and as described in clause 9(b) above, a clause requiring a contractor to obtain an approval for a higher maximum amount of liability than would otherwise apply under the *Professional Standards Act 2005*;**

For equivalent wording see clause 1 and clause 42 of the Conditions of Contract, Crown Solicitor's proforma RFT: Goods and Services.

- (c) **if appropriate, a clause providing for Year 2000 compliance, as described in clause 9(c) above; and**

For equivalent wording see clause 36 of the Conditions of Contract, Crown Solicitor's proforma RFT: Goods and Services.

- (d) **for any procurement process commenced on or after 15 February 2007, provisions under which the parties agree to conform to the Government's position on confidentiality;**

For further information see Instructions 1401. For equivalent wording of a clause that sets out the supplier's agreement to the Government's position in relation to the treatment of confidential information see the Conditions of Contract, Crown Solicitor's proforma RFT: Goods and Services.

- (e) **if appropriate, and an exemption has been approved under Instruction 1401(4), identification of contract provisions that are to be treated as confidential and the period for which they are to be confidential;**

For further information see Instruction 1401.

- (f) **a clause providing for the disclosure of the supplier information required by Instruction 1111 and described in clause 9(d) above.**

For equivalent wording see clause 16.3 of the Conditions of Contract, Crown Solicitor's proforma RFT: Goods and Services and/or Instruction 1111(5).

- (11) **Details of suppliers issued with RFT or RFQ documentation must be recorded in an appropriate manner.**
- (12) **If addenda are issued, copies must be issued to all persons who have been issued with, or downloaded, the Request for Tender or Request for Quotation documentation.**

All potential suppliers to whom addenda are issued should be requested to confirm receipt of the addenda.

RECEIVING AND OPENING QUOTATIONS AND TENDERS

- (13) **A secure facility for receipt of tenders must be provided at each designated lodgement location. The tender documentation relating to any particular tender is not to be opened until the time set for the closing of tenders has elapsed.**

Tenders should be:

- opened in the presence of a minimum of three officers, including at least two senior officers of the agency; and
 - clearly identified and recorded.
- (14) **Where an agency provides potential suppliers with opportunities to correct unintentional errors of form between the opening of submissions and any decision, the agency must provide the same opportunity to all participating potential suppliers.**
- (15) **An agency must not penalise any potential supplier whose submission is received after the specified deadline if the delay is due solely to mishandling by the agency.**

GOVERNMENT INFORMATION TECHNOLOGY CONTRACT

Agencies entering into agreements or contracts for the supply of Information Technology (IT) goods and services should refer to Instruction 1123 for further information.