

Treasurer's Instruction No	1114
Title	Exemptions from seeking written quotations and calling tenders: goods and services
Effective date	1 January 2009
Objective and Background	Provides instruction on the process agencies must follow to apply for an exemption from seeking written quotations or calling tenders.
Version Number	6
Last Reviewed Date	November 2008

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 other Instructions relating to goods and services which are contained in the 1100 series of the Treasurer's Instructions.**

Further information on goods and services procurement, including a definition of "goods and services", can be located at www.purchasing.tas.gov.au > Buying for Government.

For information on building and construction and roads and bridges procurement, refer to the 1200 series of the Treasurer's Instructions.

- (2) Exemption from the requirement to seek written quotations or call open tenders can only be approved by the Secretary of the Department of Treasury and Finance, or other authorised delegate.**

All exemptions granted, including the reasons for the granting of the exemption, will be disclosed in the Department of Treasury and Finance Annual Report. The contract and the method by which the procurement occurred (in this case, an exemption) is also required to be reported by the Agency in accordance with Instructions 1110 and 1111.

Exemptions from the requirement to seek written quotations or call open tenders may be granted in the following circumstances:

- where, in response to a prior notice, invitation to participate, or invitation to tender:
 - no tenders were submitted;
 - no tenders were submitted that conform to the essential requirements in the tender documentation; or
 - no suppliers satisfied the conditions for participation;

and the agency does not substantially modify the essential requirements of the procurement;

- where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for the following reasons:
 - the requirement is for works of art;
 - the protection of patents, copyrights, or other exclusive rights, or proprietary information; or
 - due to an absence of competition for technical reasons.

Where an exemption is sought from the requirement to go to an open tender based on the above circumstance, the absence of available competition should be verified by the Industry Capability Network Tasmania (ICNTAS).

- for additional deliveries of goods or 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 goods or services that do not meet requirements of interchangeability with existing equipment;
- for goods purchased on a commodity market;
- where an agency procures a prototype or a first good or 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;
- in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseen by the agency, the goods or services could not be obtained in time using an open or selective tender. For the purposes of this exemption, a selective tender is one conducted using the processes set out in Instruction 1108 such as a multi-use list, special licence or an expression of interest;
- for 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; and
- in the case of a contract awarded to the winner of a design contest provided that:
 - the contest has been organised in a manner that is consistent with obligations under a free trade agreement; and
 - the contest is judged by an independent jury with a view to a design contract being awarded to the winner.

Where a procurement is not impacted by a free trade agreement as set out in Instruction 1102 the following additional grounds for an exemption may be applied where appropriate:

- the cost to the agency and to suppliers would outweigh the value for money benefits of calling public tenders;
- urgency in circumstances other than those referred to above; and
- other exceptional circumstances, where conclusive justification of the request is provided.

Retrospective exemptions will not be granted.

(3) For each procurement contract that is impacted by a free trade agreement (refer Instruction 1102) and awarded through this process, agencies must prepare and appropriately file within the agency's central filing system a written report that includes:

- (a) the name of the agency;**
- (b) the value and kind of goods or services procured; and**
- (c) a statement indicating the circumstances and conditions that justify the use of a procedure other than those set out in Instructions 1107 or 1108.**

A copy of the request for exemption forwarded to the Department of Treasury and Finance together with the letter of approval from Treasury will be sufficient to meet this requirement.