

Treasurer's Instruction No	1207
Title	Major Works Procurement: building and construction/roads and bridges
Effective date	1 January 2009
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	3
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 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 at www.purchasing.tas.gov.au>Buying for Government.

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

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

PROCUREMENT PROCESSES AND PRE-QUALIFICATION

- (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.

For further information on pre-qualification, refer to Instruction 1215.

- (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) 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.**
- (10) Agencies must ensure that persons submitting bids are dealt with fairly and equitably during the tender process.**

- (11) Submissions for major works tenders must be received in accordance with Instruction 1209.
- (12) Submissions for major works must be evaluated in accordance with Instruction 1210 and any contract awarded in accordance with Instruction 1211.

DOCUMENTATION

- (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.

Disclosure

- (15) Agencies must ensure, by including provisions in the Conditions of Tender and the Conditions of Contract, that general disclosure rights are reserved for the Crown, to enable the public disclosure of relevant contract details.

For suitable wording see clause 15 of the Conditions of Tender and clause 3 of Part B of the Conditions of Contract, Crown Solicitor's proforma RFT: Building and Construction.

Building and Construction

- (16) For all major works construction contracts, except those where the use of *AS 4902-2000* or *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.

For non-construction works, such as maintenance, agencies should use appropriate Australian Standard contracts and liaise with the Crown Solicitor to ensure the contracts are appropriately amended to reflect the Government's procurement, confidentiality and contractual policies.

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

AS 4902-2000 or *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 Crown Solicitor's major works Request for Tender (building and construction version) document is available to download from www.purchasing.tas.gov.au> [Buying for Government](#)>[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.

Roads and bridges

- (17) For all major works construction contracts, except those where the use of AS 4902-2000 or 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.

For non-construction works, such as maintenance, agencies should use appropriate Australian Standard contracts and liaise with the Crown Solicitor to ensure the contracts are appropriately amended to reflect the Government's procurement, confidentiality and contractual policies.

PROCUREMENTS IMPACTED BY FREE TRADE AGREEMENTS

- (18) Any building and construction or roads and bridges procurement that is impacted by a free trade agreement (refer to Instruction 1202) must, in addition to the requirements above, comply with the requirements set out in the *Free Trade Agreements Guideline*.

The requirements of the Guideline relate to matters such as the length of time a tender is advertised and the information to be provided to tenderers, etc. The Guideline can be located at www.purchasing.tas.gov.au>Buying for Government>Resources>Publications.

CONFIDENTIALITY IN THE PROCUREMENT PROCESS AND IN RELATION TO CONTRACTS

Agencies should refer to Instructions 1229 and 1401.