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| Treasurer's Instruction No | 1109 |
| Title | Goods and Services Procurement Documentation and Receipt and Opening of Submissions |
| Effective date | 1 January 2009 |
| 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. |
| 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.

Process checklists that will assist agencies in meeting the mandatory requirements of this Instruction are located at www.purchasing.tas.gov.au> Buying for Government>Resources>Checklists.

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 the Industry Capability Network Tasmania (ICNTAS) to ensure that it does not unnecessarily preclude Tasmanian businesses from bidding. Further information on the ICNTAS can be located at www.purchasing.tas.gov.au> Buying for Government> 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 a free trade agreement (refer Instruction 1102), the specifications must comply with the requirements for technical specifications set out in the *Free Trade Agreements Guideline*.

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; and
 - (b) the procurement is one that is impacted by a free trade agreement;
- the agency must comply with the *Free Trade Agreements Guideline* requirements.

The Guideline requires agencies to allow suppliers time to pre-qualify. Further information is contained in the Guideline which can be located at www.purchasing.tas.gov.au>Buying _____ for _____ Government>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.

Request for Tender (RFT) Conditions of Tender and Contract documentation (Goods; Services; Goods and Services; and Information Technology) have been prepared by the Crown Solicitor. Agencies are encouraged to use these proforma documents which are available at www.purchasing.tas.gov.au>Buying for Government>Resources>Forms.

The individual components of the proforma RFT documents, such as the Conditions of Contract, cannot be used in isolation as the individual components are interdependent. If an agency has undertaken a procurement without using the proforma RFT documentation and requires a contract to be prepared, contact the Crown Solicitor for advice and approval of the document

- (7) If an agency chooses to materially amend the Crown Solicitor's proforma RFT documentation, the amended documentation must:
- (a) include all mandatory clauses listed in clause (9) below; and
 - (b) be submitted to the Crown Solicitor for approval.

To enable the Crown Solicitor to respond quickly to a request for approval, it is recommended that agencies mark up any changes made to the proforma RFT document. The Crown Solicitor will then be able to review the marked up document in a shorter time frame, and at a reduced cost to the agency, than would be otherwise possible if changes are not easily 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 to the Crown Solicitor for approval.**

Further information on the steps involved in preparing Conditions of Tender and Contract are available at www.purchasing.tas.gov.au>Buying for Government>Goods and Services>Purchasing G&S \$100 000 and over>Preparing Documentation.

(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*;**

The *Professional Standards Act 2005* provides for the limitation of liability of members of occupational associations in certain circumstances. This clause provides for a waiver of future rights that may be available to suppliers under a future scheme in force under the Act. For suitable wording see clause 6 of the Important Information for Tenders, Crown Solicitor's proforma RFT: Goods and Services, together with clause 1 and clause 23.1 of the Conditions of Tender of that document.

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

Under section 27 of the *Professional Standards Act 2005*, the Crown may require a member of a scheme to obtain approval for a higher maximum amount of liability than would otherwise apply. Drafters should always consider whether such approval is required. For suitable wording see clause 6 of the Important Information for Tenders, Crown Solicitor's proforma RFT: Goods and Services, together with clause 1 and clause 23.1 of the Conditions of Tender of that document.

- (c) a clause providing for disclosure of contract information;**

This clause ensures that the Government's confidentiality policy requirements (refer to Instructions 1401 and 1124) are properly reflected in the quotation or tender document. For suitable wording see clause 5 of the Conditions of Tender, Crown Solicitor's proforma RFT: Goods and Services.

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

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

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

For suitable wording see clause 21 of the Conditions of Tender, Crown Solicitor's proforma RFT: Goods and Services.

(f) information on the Government's policy on confidentiality; and

For further information refer to Instructions 1401 and 1124. For suitable wording see the Conditions of Tender clauses 5, 20.6 and 23.2 - 23.3, also clause 7 of the Important Information for Tenderers, Crown Solicitor's proforma RFT: Goods and Services.

(g) if appropriate, advice that dumped goods will not be accepted.

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

In addition to the above, a clause providing information on the Government's policy to enhance opportunities for local business, and the Government's participation in cooperative and free trade agreements should be considered for inclusion, where appropriate, in the RFQ and RFT documentation.

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

(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 suitable 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 approval for a higher maximum amount of liability than would otherwise apply under the *Professional Standards Act 2005*;

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

(c) provisions under which the parties agree to conform to the Government's position on confidentiality;

For further information refer to Instruction 1401. For suitable 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 clause 16 of the Conditions of Contract, Crown Solicitor's proforma RFT: Goods and Services.

- (d) 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; and

For further information see Instruction 1401 and clause 16 of the Conditions of Contract, Crown Solicitor's proforma RFT: Goods and Services.

- (e) a clause providing for the disclosure of contract information.

For suitable wording see clause 16 of the Conditions of Contract, Crown Solicitor's proforma RFT: Goods and Services.

- (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 RFT or RFQ 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 submission relating to any particular tender is not to be opened until the time set for the closing of tenders has elapsed.

It is recommended that tender submissions 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 an opportunity 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.