

Treasurer's Instruction No	1202
Title	International Obligations: building and construction/roads and bridges
Effective date	6 March 2009
Objective and Background	Provides instruction and guidance on Cooperative Arrangements and Free Trade Agreements.
Version Number	5
Last Reviewed Date	June 2009

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.

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

COOPERATIVE ARRANGEMENTS

The Tasmanian Government, together with the Australian Government and all other State and Territory Governments, is bound by the *Australia and New Zealand Government Procurement Agreement* (ANZGPA).

- (2) In accordance with the ANZGPA, agencies must not give preference to Tasmanian suppliers over those from another Australian jurisdiction or New Zealand. Australian and New Zealand suppliers must be given equal consideration and opportunities to contract for the supply of goods and services (including construction and related services) to the State Government in relation to all procurements.**

The ANZGPA is a cooperative agreement which applies to all procurements undertaken by agencies regardless of value.

Further information on the ANZGPA can be located at www.purchasing.tas.gov.au>Buying for Government>Purchasing Framework>Purchasing Policies. A copy of the ANZGPA can be obtained from the Australian Procurement and Construction Council website at www.apcc.gov.au.

FREE TRADE AGREEMENTS

The Tasmanian Government, together with the Australian Government and all other State and Territory Governments, is bound by a number of free trade agreements. As of 6 March 2009, those agreements which include specific Government procurement commitments include:

- (1) the *Australia – United States Free Trade Agreement (AUSFTA)*; and
- (2) the *Australia – Chile Free Trade Agreement (ACFTA)*.

All relevant free trade agreement obligations are incorporated into the procurement policy framework as expressed in this and related Treasurer's Instructions and in the *Free Trade Agreements Guideline*. The Guideline can be located at www.purchasing.tas.gov.au>Buying for Government>Resources>Publications.

- (3) **In accordance with the terms of the free trade agreements, in any procurement governed by the agreements:**
 - (a) **agencies must treat the goods and services (where services includes construction services, as defined in the terms of the free trade agreements) of a party to a free trade agreement and the suppliers of goods and services (including construction) of a party to a free trade agreement on a basis which is no less favourable than the most favourable treatment provided by the agency to goods and services or suppliers of goods and services (including construction) from Tasmania, Australia or New Zealand; and**
 - (b) **an agency must not treat a locally established supplier less favourably than other locally established suppliers on the basis of degree of affiliation or ownership with, or by, a party to a free trade agreement nor discriminate against a locally established supplier on the basis that the goods or services (including construction) offered by that supplier for a particular procurement are goods and services of a party to a free trade agreement.**
- (4) **If it is determined that a procurement falls within the scope of a free trade agreement by which the Tasmanian Government is bound, then, in addition to the requirements under the Treasurer's Instructions, relevant requirements in the *Free Trade Agreements Guideline* must also be followed.**

The requirements set out in the Guideline relate to matters such as the length of time a tender is advertised and the information to be provided to tenderers, etc. A procurement is covered by the relevant free trade agreements if it is:

- a procurement by any contractual means, including purchase, rental or lease, with or without an option to buy, build-operate-transfer contract and public works concession contract;
- for which the estimated dollar value of the procurement is equal to or in excess of the specified threshold set out below;
- conducted by an inner-Budget agency; and

- the procurement is not an excluded procurement.

A build-operate-transfer contract and public works concession contract means any contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plant, buildings, facilities, or other government owned works and under which, as consideration for a supplier's execution of a contractual arrangement, an agency grants the supplier, for a specified period of time, temporary ownership or a right to control and operate, and demand payment for the use of such works for the duration of the contract.

From 1 January 2008 to 31 December 2009, the provisions of relevant free trade agreements apply to building and construction procurement (including roads and bridges) where the procurement has an estimated dollar value equal to, or in excess of, \$9.570 million (inclusive of GST). The estimated dollar value of a procurement is to be ascertained in accordance with Instruction 1204.

If information on threshold values prior to 1 January 2008 is required, please contact the Department of Treasury and Finance, Procurement and Property Branch.

The requirements of relevant free trade agreements do not apply to (excluded procurements):

- non-contractual agreements or any form of assistance including grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, cooperative agreements and sponsorship arrangements;
- procurement of goods and services (including construction) by an agency from other Tasmanian Government entities and provision of goods or services by or between a Tasmanian inner-Budget agency and Tasmanian local government;
- purchases funded by international grants, loans, or other assistance, where the provision of such assistance is subject to conditions inconsistent with the binding free trade agreements;
- purchases funded by grants and sponsorship payments from persons not listed in the binding free trade agreements;
- procurement for the direct purpose of providing foreign assistance;
- procurement of research and development services;
- procurement of goods and services (including construction) outside the territory of Australia, for consumption outside the territory of Australia;
- acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, and sale and distribution services for government debt;
- procurement of health and welfare services;
- procurement of education services;

- procurement of advertising services; and
- procurement of plasma fractionation services.

In addition, the provisions of the Procurement Chapter of each free trade agreement do not apply to:

- any form of preference to benefit small and medium enterprises;
- measures to protect national treasures of artistic, historic or archaeological value;
- measures for the health and welfare of indigenous people; and
- measures for the economic and social advancement of indigenous people.

Each free trade agreement also states that nothing in it shall be construed:

- to require a party to provide access to information, the disclosure of which it determines to be contrary to its essential security interests; or
- to prevent a party from applying measures that it considers necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests; or
- to require a party to provide access to confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or which would prejudice the legitimate commercial interests of particular enterprises, public or private.