

TREASURER'S INSTRUCTION
FINANCIAL MANAGEMENT ACT 2016
PROCUREMENT FRAMEWORK - POLICIES IMPACTING ON
PROCUREMENT: BUILDING AND CONSTRUCTION / ROADS AND
BRIDGES

EFFECTIVE DATE

1 July 2019

SCOPE

This Treasurer's Instruction applies to all Agencies listed in Column I of Schedule I, Part I in the *Financial Management Act 2016*.

APPLICATION

At all times.

OBJECTIVE

To detail Government policies that impact building and construction / roads and bridges *procurement*.

INSTRUCTION

Interpretation and Definitions

Refer to Treasurer's Instruction PF-6 for general definitions.

Use of *Qualified suppliers*

- 4.1 *Works contracts* must only be awarded to suppliers that have declared they, and their employees and/or sub-contractors, are a *qualified supplier* in respect of the type of work encompassed by the *contract*.
- 4.2 The declaration must be sought as part of the supplier's submission in response to a request for tender or quote, or where a competitive process is not undertaken, prior to a *contract* being entered into.

Use of Prequalified Contractors and Consultants

Building and Construction works

- 4.3 Unless otherwise exempted in accordance with clause 4.12, where a relevant *prequalification category* exists, *contracts* for building and construction *major works* must only be awarded to *prequalified contractors*.
- 4.4 Where a project value exceeds the maximum financial level to which *contractors* can be prequalified, the preferred supplier must:
- 4.4.1 be prequalified to the maximum available financial level for that category; and
 - 4.4.2 have appropriate qualifications, expertise, experience and financial capacity to undertake work to the higher level required by the project.
- 4.5 Unless otherwise exempted in accordance with clause 4.13, where sub-contractors are to be used, whether nominated by the Agency in procurement documentation or engaged by the head *contractor*, *prequalified sub-contractors* must be used where:
- 4.5.1 the work to be undertaken by the sub-contractor is valued at \$250 000 or more; and
 - 4.5.2 a relevant *prequalification category* exists.
- 4.6 Where a *contractor* is engaged from the National Prequalification System for Non-residential Building (for projects valued at \$50 million or more), a performance report must be prepared when the project is completed or, if terminated due to unsatisfactory performance, when terminated. Completed reports must be sent to the Manager, *Contracts - Procurement, Risk and Contract Management Branch*, Department of Treasury and Finance, or by email to prequalified@treasury.tas.gov.au.

Roads and Bridges Works

- 4.7 Unless otherwise exempted in accordance with clause 4.12, where a relevant *prequalification category* exists, roads and bridges *major works contracts* must only be awarded to *contractors* prequalified in accordance with the requirements of the Department of State Growth's Prequalification System for Roads and Bridges *Contracts*.
- 4.8 Unless otherwise exempted in accordance with clause 4.13, where sub-contractors are to be used, whether nominated by the Agency in procurement documentation or engaged by the head *contractor*, *prequalified sub-contractors* must be used where:
- 4.8.1 the work to be undertaken by the sub-contractor is valued at \$250 000 or more; and
 - 4.8.2 a relevant *prequalification category* exists.

Consultancies

- 4.9 Unless otherwise exempted in accordance with clause 4.12, where a relevant prequalification category exists, *contracts* for building and construction / roads and bridges *consultants* must only be awarded to *prequalified consultants*.
- 4.10 Where a project value exceeds the maximum financial level that *consultants* can be prequalified to, the preferred supplier must:
- 4.10.1 be prequalified to the maximum available level for that category; and
 - 4.10.2 have appropriate qualifications, expertise, experience and financial capacity to undertake work to the higher level required by the project.
- 4.11 Unless otherwise exempted in accordance with clause 4.13, where sub-consultants are to be used, whether nominated by the Agency in procurement documentation or engaged by the head *consultant*, *prequalified sub-contractors* must be used where a relevant prequalification category exists.

Use of non-prequalified contractors / consultants

- 4.12 Where an Agency intends to engage a supplier that is not prequalified, and *contractors* or *consultants* are prequalified for the work that is being undertaken, the Secretary of the Department of Treasury and Finance is permitted to approve an exemption from the requirement to use a prequalified supplier prior to the engagement of the supplier. Approval for *limited tendering* by way of direct sourcing (where required) must be subsequently considered by the Agency's Accountable Authority in accordance with the requirements in Treasurer's Instruction PP-2.
- 4.13 Where:
- 4.13.1 an Agency wishes to nominate, in procurement documentation, a sub-contractor or sub-consultant that is not prequalified, and prequalified suppliers are registered for the work that is being undertaken, the Secretary of the Department of Treasury and Finance is permitted to approve an exemption prior to the release of the documentation; or
 - 4.13.2 a contracted head contractor or a head consultant wishes to engage a sub-contractor or sub-consultant that is not prequalified, the Agency must seek an exemption from the requirement to use a prequalified sub-contractor or sub-consultant. The Secretary of the Department of Treasury and Finance is permitted to approve an exemption prior to the engagement of the sub-contractor or sub-consultant; or
 - 4.13.3 it is not possible for a contracted head *contractor* / head *consultant* to identify the appropriate categories or financial levels that a sub-contractor or sub-consultant should hold, the Agency must seek a variation from the requirement to use a prequalified sub-contractor or sub-consultant. The Secretary of the Department of Treasury and Finance is permitted to

approve a variation prior to the engagement of the sub-contractor or sub-consultant.

Packaging of works/projects

4.14 Building and construction/roads and bridges works and consultancy projects must not be packaged with the intention of circumventing the prequalification thresholds.

Contractor Insurance Requirements for Building and Construction Works – Principal-nominated Insurance

4.15 For:

- all building and construction *major works* projects; and
- building and construction *minor works* projects with a value of \$50 000 or more, unless a risk assessment indicates that the use of the Principal-nominated insurance policy for the *minor works* is not warranted;

the *contractor* must be required to effect insurance of works and public liability insurance through the Government's Principal-nominated insurance policy.

The Agency must effect the cover, should the *contractor* fail to do so.

Performance Security

4.16 For *works contracts* with a value of \$250 000 or more, Agencies must ensure that the *contractor* provides security for performance either through:

- 4.16.1 an unconditional bank guarantee given by an approved financial institution;
- 4.16.2 an unconditional performance bond (a demand bond) given by an insurance company approved by the Secretary of the Department of Treasury and Finance, which meets the requirements of clause 4.20;
- 4.16.3 an unconditional undertaking from a security provider approved by the engaging Agency's Accountable Authority, in accordance with clause 4.21;
- 4.16.4 retention monies; or
- 4.16.5 a combination of any of the above.

4.17 The total amount of security required under a particular *contract* must be, subject to clause 4.18, five per cent (5%) of the *contract* sum up to a *contract* sum limit of \$500 000 plus three per cent (3%) of the amount by which the *contract* sum exceeds \$500 000.

4.18 Agencies are permitted to manage and adjust the security to reflect the value of all outstanding works to be provided by the *contractor* for the relevant Agency (where contracted to complete a number of projects over similar/overlapping periods with that Agency).

- 4.19 The costs of any transfer and re-transfer of security (if any), and of any incidentals to the transfer and re-transfer, (including all stamp duty or other taxes) must be borne by the *contractor*.
- 4.20 An unconditional performance bond will only be permitted where:
- 4.20.1 it is couched in terms that do not expose the *Crown* to any risk that it might be terminated for any reason (eg non-payment of premium) during its term;
- 4.20.2 it provides a direct recourse by the *Crown* to the underwriter in the event of contractual default; and
- 4.20.3 it is subject to the laws of, and legal action in, Tasmania.
- 4.21 Where a provider other than an approved financial institution or a bond provider approved by the Secretary of the Department of Treasury and Finance is sought to be used, the Accountable Authority is permitted to approve the alternative provider where the following conditions are met:
- 4.21.1 the security is in the form of an unconditional and irrevocable undertaking to pay on demand; and
- 4.21.2 the security provider:
- operates in Australia;
 - is either incorporated in Australia, or if it is not, Office of the Crown Solicitor advice is obtained to identify risks and mitigations;
 - has a credit rating threshold of A- or above as assessed by Standard and Poor's or equivalent; and
 - is either regulated by the Australian Prudential Regulation Authority (APRA) or, if it is not, limit the total value of its performance bonds held by the Agency to a maximum value of 10 per cent (10%) of its net tangible assets.
- 4.22 Where a *contractor* is permitted to provide retention monies, either in full or in addition to security, those retention monies must be deducted from progress payments at a rate of 10 per cent (10%) until the amount of retention held, plus any security held, equals the required amount.

Tasmanian Government Building and Construction Training Policy

- 4.23 Agencies must require *contractors* and sub-contractors to comply with the Tasmanian Government Building and Construction Training Policy for all building construction and maintenance works with a value of \$250 000 or more.

Tasmanian Government Art Site Scheme

4.24 For new buildings and refurbishment projects valued at \$250 000 or more:

- 4.24.1 artwork to the value of two per cent (2%) of the project capital works estimate, to an upper limit of \$80 000 (excluding GST), must be purchased or commissioned; and
- 4.24.2 the artist's brief must be approved by the Minister for the Arts and the relevant Agency's portfolio Minister.

Supplier requirements - National Code of Practice for the Construction Industry and Australian Code of Tendering

4.25 For all *procurement* valued at \$50 000 or more:

- 4.25.1 *Contractors and consultants* must be required to comply with the *National Code of Practice for the Construction Industry, 1997 Edition* and the *Tasmanian Annexure to the National Code of Practice for the Construction Industry*; and
- 4.25.2 *Contractors* must be required to comply with the Australian Standard *AS 4120-1994 Code of Tendering*.

Parliamentary Standing Committee on Public Works

4.26 Agencies must comply with the requirements of the *Public Works Committee Act 1914* in relation to approval of the Parliamentary Standing Committee on Public Works.

ADDITIONAL GUIDANCE

Further information in support of this Treasurer's Instruction can be found in the Procurement Framework Better Practice Guidelines.