

TREASURER'S INSTRUCTION
FINANCIAL MANAGEMENT ACT 2016

PROCUREMENT FRAMEWORK - DEFINITIONS AND INTERPRETATION

EFFECTIVE DATE

1 July 2019

SCOPE

This Treasurer's Instruction applies to all Agencies listed in Column 1 of Schedule 1, Part 1 in the *Financial Management Act 2016*.

APPLICATION

At all times.

OBJECTIVE

To provide definitions of terms used in specified Treasurer's Instructions.

INSTRUCTION

Interpretation and Definitions

- 6.1 The following definitions and interpretations apply to Treasurer's Instructions PF-1 to PF-5, PP-1 to PP-6, D-1 and C-1 unless otherwise specifically stated in one of those Treasurer's Instructions.
- 6.1.1 "*competitive procurement process*" is any procurement process where more than one supplier is approached to respond or submit a proposal, quote or tender.
 - 6.1.2 "*confidentiality provision*" is a provision that, if included in a *contract*, would restrict or prohibit the capacity of any party to that *contract* to lawfully disclose any term of, or other information in or concerning, the contents of, that *contract*.
 - 6.1.3 "*consultant*" is a particular type of *contractor* and is a person or organisation engaged to provide recommendations, specialist or professional advice (or more generally, non-manual services) to assist or influence decision-making. A consultant is usually engaged by way of a short term or temporary *contract*, is normally expected to work without direct supervision, to exercise their own judgement, conduct complex research or investigations and provide advice or recommendations. A consultant may include, where the context is appropriate, building and construction consultants such as architects and engineers.

- 6.1.4 “*contract*” is a legally binding agreement (including deeds) between parties. Such an agreement does not need to be in writing – although generally it is documented in some way, which may include an exchange of letters or emails. A contract is legally binding when the parties must obey the terms in the contract and perform their contract duties as stated. Failure to do so may result in legal consequences, such as a damages award.
- 6.1.5 “*contractor*” is a person or organisation engaged under a *contract* to provide specified goods or services. A contractor is not an employee. A contractor will usually work under the supervision of an Agency officer.
- 6.1.6 “*covered procurement*” is a procurement covered by a Government Procurement chapter in an applicable international procurement agreement. These are set out in the publication *International Procurement Obligations*.
- 6.1.7 “*Crown*” means the Crown in right of the State of Tasmania.
- 6.1.8 “*goods and services*” procurement includes procurement by way of lease or rental.
- 6.1.9 “*Government’s insurance broker*” is the entity engaged from time to time to place and manage the Government’s insurance needs with regard to principal nominated insurance for building and construction works.
- 6.1.10 “*lease*” includes hire purchase.
- 6.1.11 “*limited tendering*” is where an Agency either negotiates directly with a single supplier (direct sourcing) or approaches a limited number of suppliers where, but for approval being granted, a more expansive market approach process would be required (limited submission sourcing).
- 6.1.12 “*Local Small and Medium Enterprises/Local SMEs/Local SME suppliers*” are Australian or New Zealand businesses employing less than 200 people.
- 6.1.13 “*major works*” is building and construction works valued at \$250 000 or more or roads and bridges works valued at \$500 000 or more.
- 6.1.14 “*minor works*” is building and construction works valued at less than \$250 000 or roads and bridges works valued at less than \$500 000.
- 6.1.15 “*multi-use list*” means a list of prequalified or pre-registered suppliers, intended for use in more than one procurement process.
- 6.1.16 “*open tendering*” is a market approach where all interested suppliers may submit an offer in response.
- 6.1.17 “*prequalification category*” is a category within which suppliers are registered for building and construction or roads and bridges projects.
- 6.1.18 “*prequalified contractor / sub-contractor or prequalified consultant / sub-consultant*” is one registered:

- in a prequalification category with one of the following schemes;
 - for non-residential building where the value of the project is \$50 million or more - the National Prequalification System for Non-residential Building;
 - for all other building and construction works - the Department of Treasury and Finance Prequalification Scheme (Contractors);
 - for roads and bridges works - the Department of State Growth Prequalification System for Roads and Bridges Construction *Contracts*; or
 - for *consultants* - the Department of Treasury and Finance Prequalification Scheme (Consultants); and
 - to a financial level relevant to the procurement price/cost submitted by the *contractor* / sub-contractor or *consultant* / sub-consultant.
- 6.1.19 “*procurement*” includes the process of acquiring goods and services (including construction and works) by -
- (a) identifying the need to purchase goods and services; and
 - (b) selecting suppliers for goods and services.
- 6.1.20 “*procurement contract*” means a contract arising as a result of a *procurement process* as defined in clause 6.1.21 below.
- 6.1.21 “*procurement process*” includes but is not limited to:
- *selective tendering*;
 - selection of consultants in accordance with Treasurer’s Instruction PP-2 clause 2.2;
 - *limited tendering* (including direct selections);
 - *quotation processes*; and
 - *open tendering*;
- unless otherwise specifically modified or excluded by a specific Treasurer’s Instruction.
- 6.1.22 “*purchase*” includes *lease* or rental of goods or equipment as well as outright purchase.
- 6.1.23 “*qualified supplier*” is a *contractor* who holds the appropriate certifications, accreditations, registrations or licences necessary to undertake the type of work encompassed by the *contract*.

- 6.1.24 “*quotation process*” is a market approach where a minimum of three quotes are sought from potential suppliers.
- 6.1.25 “*real property*” includes land, buildings, structures firmly attached and integrated equipment, crops or other resources still attached to or within the land or improvements or fixtures permanently attached to the land, and all rights or interests in the property (eg reversion, use of airspace).
- 6.1.26 “*relevant legislation*” in relation to the disposal of:
- surplus Crown real property includes, but is not limited to, the *Crown Lands Act 1976*, the *Homes Act 1935* or any other legislation which is applicable to the disposal of Crown real property;
 - non-real property assets includes, but is not limited to, the *Tasmanian Museum and Art Gallery Act 2017* or any other legislation that is applicable to the disposal of Crown assets.
- 6.1.27 “*selective tendering*” (also known as “multi-stage procurement”) is where more than one approach is made to suppliers with the first approach generally open to all suppliers and subsequent approaches limited to those that initially responded or a sub-set of those. It includes expressions of interest, requests for proposal and selecting suppliers from a *multi-use list*.
- 6.1.28 “*substantial procurement opportunity*” is any combined *contract* value of \$250 000 or more.
- 6.1.29 “*Tasmanian business*” is a business operating in Tasmania that has a permanent office or presence in Tasmania and which employs Tasmanian workers.
- 6.1.30 “*Tenders website*” is an online tendering system managed by the Department of Treasury and Finance for Tasmanian Government procurement.
- 6.1.31 “*works*” is any building, civil engineering or engineering work. It includes building construction, roads and bridges construction, and maintenance of structures or engineering works. It excludes consultancies related to those matters.
- 6.2 Any thresholds referred to in Treasurer’s Instructions PF-1 to PF-5, PP-1 to PP-6, D-1 and C-1 are GST exclusive.