

TREASURER'S INSTRUCTION
FINANCIAL MANAGEMENT ACT 2016

PROCUREMENT PROCESSES - WORKS PROCUREMENT

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 information on the process Agencies must follow for *procurement* related to building and construction / roads and bridges works.

INSTRUCTION

Interpretation and Definitions

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

This Treasurer's Instruction applies to all *procurement* (including *procurement* with a value less than \$50 000) unless otherwise specifically stated.

Process requirements

- 4.1 A *substantial procurement opportunity* must be disaggregated and pre-procurement local impact assessments must be prepared and approved where required by Treasurer's Instruction PF-2.
- 4.2 Where *prequalified contractors* are not used (refer Treasurer's Instructions PF-4), a *procurement process* must be undertaken that will ensure that the contractor possesses the necessary technical and financial capability.
- 4.3 Agencies must require suppliers, for all *procurement* with a value of \$50 000 or more, to comply with the *Australian Standard AS 4120-1994 Code of Tendering*, 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*.

- 4.4 Each process must be allocated a specific closing time, date and place of lodgement (which is to be the same for all potential suppliers) and which is clearly stated in all documents, notices and advertisements.
- 4.5 A secure facility for receipt of submissions must be provided at each designated lodgement location. The ability for a supplier to lodge submissions electronically must be provided.
- 4.6 When procurement documentation has been released, details of potential suppliers provided with procurement documentation must be recorded and retained in an appropriate manner, together with advice from those approached who have declined to submit a response.
- 4.7 If, following the release of procurement notices and documentation, an addendum is issued, a copy of the addendum must be:
 - 4.7.1 provided to all potential suppliers that have been issued with the procurement documentation in the same manner in which the suppliers were provided with the original procurement documentation;
 - 4.7.2 included in each set of procurement documents not yet issued; and
 - 4.7.3 where the *Tenders website* is used to provide access to the procurement documentation via downloadable files, published on the *Tenders website*.
- 4.8 Where addenda are issued that will result in a substantial change and these are issued with less than five working days remaining to the closing date of the process, an appropriate and adequate extension to the closing date must be provided to enable suppliers to revise their submission. A substantial change is one that would require the supplier to re-work their submission or pricing.
- 4.9 Submissions must not be opened until the time set for the closing of submissions has elapsed.
- 4.10 Potential suppliers lodging submissions must be dealt with fairly and equitably during the process.
- 4.11 Fair and impartial procedures must be in place in relation to receiving and opening all submissions and submissions must be treated in confidence so far as the law allows this.
- 4.12 Late submissions must not be accepted where to do so would compromise the integrity of the process or provide an unfair advantage to the supplier lodging the late submission. Where specific processes in relation to the treatment of late responses is contained in the procurement documentation, the stated processes must be applied.
- 4.13 Potential suppliers whose submissions are received after the time set for the closing of submissions must not be penalised if the delay is due solely to mishandling by the procuring Agency.

- 4.14 Submissions must be evaluated fairly and equitably, in a manner that is consistent with the Government's *procurement* principles (refer Treasurer's Instruction PF-1) and in accordance with the conditions for participation, evaluation criteria and methodology contained in the procurement documentation. For roads and bridges projects, at the agency's discretion either the State Growth Weighted Attribution System or the weighted attributed methodology contained in the *Guidelines for Tender Evaluation Using Weighted Criteria* must be used.
- 4.15 Where a *competitive procurement process* has been undertaken, submissions from Government entities must only be accepted where the Government's policy on full cost attribution (refer Treasurer's Instruction PF-2) has been met.
- 4.16 For major *works*, where the lowest conforming submission is 10 per cent (or more) either below or above the pre-procurement estimate, the estimate must be checked and reconciled with the price submitted by other suppliers and:
- 4.16.1 where the preferred supplier's price is 10 per cent (%) or more under the estimate, the supplier must be requested to confirm in writing that the nature and the value of the *contract* is fully understood, that the price properly reflects all the contractual obligations and that they remain satisfied that the price is correct; and
- 4.16.2 where the preferred supplier's price is 10 per cent (%) or more over the estimate, the Agency must ensure that the supplier is prequalified to that higher level.
- 4.17 Where conditions for participation have been applied, including where prequalification is a condition for participation, a submission must not be considered for evaluation unless the supplier meets those conditions at the time of opening of the submissions.
- 4.18 Where a potential supplier is provided with opportunities to correct unintentional errors of form between the opening of submissions and the award of *contract*, all participating potential suppliers must be provided with the same opportunities.
- 4.19 Prior to advice being provided to suppliers on the outcome and/or before negotiations are entered into with the preferred suppliers or a *contract* being awarded:
- 4.19.1 the supplier must have declared that they and their employees/sub-contractors hold all appropriate licences and accreditations (refer Treasurer's Instruction PF-4);
- 4.19.2 where prequalification is required (refer Treasurer's Instruction PF-4):
- the information in the submission relating to the preferred supplier's prequalification status, threshold and category must correspond with the information held by the administrators of the prequalification scheme;

- for projects impacted by the *National Prequalification System for Non-residential Building*, an assessment of the financial capacity of the preferred contractor must be undertaken; and
- 4.19.3 the *procurement* must be referred to the Agency's Procurement Review Committee where required by Treasurer's Instruction PF-5.
- 4.20 *Contracts* must only be awarded to recognised legal entities
- 4.21 Prior to finalising the *contract* with the preferred supplier:
 - 4.21.1 the agency must confirm that the supplier is a recognised legal entity;
 - 4.21.2 any revised estimates or negotiations in relation to price or services must be fully documented and any amendments and relevant addenda must be incorporated into the *contract*; and
 - 4.21.3 where required, a Tasmanian Industry Participation Plan must be prepared and approved (refer Treasurer's Instruction PF-2).
- 4.22 Following the award of *contract*:
 - 4.22.1 all responding suppliers must be advised of the outcome of the process and provided with details of the successful offer including the name of the supplier and the price accepted; and
 - 4.22.2 unsuccessful suppliers must be debriefed on request.

Procurement documentation

- 4.23 For all *minor works construction contracts* valued at \$50 000 or more, *Australian Standard AS 4905-2002, Minor Works Conditions* must be used except where otherwise advised by the Office of the Crown Solicitor that an alternative form of documentation is appropriate.
- 4.24 For *major works procurement*, the Request for Tender documents prepared by the Office of the Crown Solicitor and *Australian Standard AS 2124-1992 General Conditions of Contract* must be used except:
 - 4.24.1 where the use of *Australian Standards AS 4902-2000* or *AS 4300-1995 General Conditions of Contract for Design and Construct* are considered more appropriate by the Agency; or
 - 4.24.2 where *Australian Standard AS 2124-1992 General Conditions of Contract* is not appropriate for the type of works being undertaken (eg maintenance); or
 - 4.24.3 where otherwise advised by the Office of the Crown Solicitor that an alternative form of documentation is appropriate.

General inclusions in documents

- 4.25 Procurement documentation must include:
- 4.25.1 all the information necessary to enable potential suppliers to prepare appropriate responses;
 - 4.25.2 the allocated closing time, date and place for lodgement of responses;
 - 4.25.3 an Agency contact for the provision of additional information;
 - 4.25.4 for *procurement* with a value of \$50 000 or more, the requirement for suppliers 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*;
 - 4.25.5 for *procurement* with a value of \$50 000 or more, the applicability of, and the requirement for suppliers to comply with, the *Australian Standard Code of Tendering AS 4120-1994*;
 - 4.25.6 information on the Government's procurement complaints process (refer Treasurer's Instruction PF-5);
 - 4.25.7 provisions relevant to the Government's confidentiality policy (refer Treasurer's Instruction C-1) and reserving general disclosure rights to enable the reporting of *contract* information (refer Treasurer's Instruction PF-5);
 - 4.25.8 provisions relevant to the Government's position on zero tolerance towards violence against women;
 - 4.25.9 information on the entitlement of unsuccessful suppliers to be debriefed; and
 - 4.25.10 the requirement to complete a Declaration with respect to Licences and Registrations (Treasurer's Instruction PF-4); and
- 4.26 Specifications must address value for money considerations and not restrict competition, reflect bias to any brand or act as a barrier to the consideration of any alternatives.
- 4.27 Where a *competitive procurement process* is not undertaken, prospective suppliers must be provided with the following information prior to engagement:
- 4.27.1 information on the Government's confidentiality policy (refer Treasurer's Instruction C-1) and the requirement for general disclosure to enable the reporting of *contract* information (Treasurer's Instruction PF-5);

- 4.27.2 the requirement to complete a Declaration with respect to Licences and Registrations (Treasurer's Instruction PF-4); and
- 4.27.3 information on the Government's position on zero tolerance towards violence against women.
- 4.28 Where required, the following must be included in the procurement documentation or, where a *competitive procurement process* is not undertaken, provided to potential suppliers through correspondence prior to engagement:
- 4.28.1 any mandatory conditions for participation and/or prequalification requirements including requirements for sub-contractors to be prequalified;
- 4.28.2 a request for suppliers to provide a Local SME Industry Impact Statement (refer Treasurer's Instruction PF-2);
- 4.28.3 an evaluation criterion relating to the local SME industry impact (refer Treasurer's Instruction PF-2);
- 4.28.4 where required, the need for the preferred supplier to complete a Tasmanian Industry Participation Plan and agree to publication of the Plan (refer Treasurer's Instruction PF-2);
- 4.28.5 Building and Construction Training policy requirements (refer Treasurer's Instruction PF-4);
- 4.28.6 Principal Nominated Insurance requirements (refer Treasurer's Instruction PF-4);
- 4.28.7 performance security and/or retention monies requirements (refer Treasurer's Instructions PF-4);
- 4.28.8 the requirement to complete a Workplace Health and Safety (WHS) Contractor Management System Questionnaire or provide a current certified copy of Third Party Quality Assurance (Occupational Health and Safety);
- 4.28.9 where a scheme under the *Professional Standards Act 2005* applies and it is considered appropriate by the Accountable Authority, provisions that require the supplier to agree that:
- the level of liability under the *contract* will be limited in accordance with, and subject to, the Scheme; and
 - where the Scheme allows for a supplier to apply for a higher maximum amount of liability than would otherwise apply under a Scheme, and the Accountable Authority has determined that such a higher maximum amount should be required, the supplier will ensure the limit of their liability complies with the requirement;

- 4.28.10 where no existing applicable schemes apply under the *Professional Standards Act 2005* and it is considered appropriate by the Accountable Authority, a waiver of rights in respect of any future scheme; and
- 4.28.11 requirements for compliance with the *Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry* or accreditation under the Australian Government Building and Construction WHS Accreditation Scheme, where applicable.

Contract Documentation

4.29 *Contracts* with suppliers must:

- 4.29.1 name the *Crown* as the Government party (except where a statute specifically confers contracting power to a Government statutory entity);
- 4.29.2 include provisions:
- relevant to the Government's confidentiality policy (refer Treasurer's Instruction C-1) and reserving general disclosure rights to enable the reporting of *contract* information (refer Treasurer's Instruction PF-5); and
 - in relation to the Government's position on zero tolerance towards violence against women.

4.30 Where required, the following must be included in *contracts* with suppliers:

- 4.30.1 provisions that identify any *contract* provisions that are to be treated as confidential and the period for which they are to be confidential (refer Treasurer's Instruction C-1); and
- 4.30.2 provisions relevant to the completion, compliance with and publication of a Tasmanian Industry Participation Plan (refer Treasurer's Instruction PF-2);
- 4.30.3 provisions that provide for a waiver of rights in respect of a future scheme in force under the *Professional Standards Act 2005*;
- 4.30.4 provisions that, subject to clause 4.30.5, detail that the level of the contractor's liability will be limited in accordance with and subject to a scheme that applies under the *Professional Standards Act 2005*; and
- 4.30.5 provisions requiring the *contractor* to apply for a higher maximum amount of liability to the extent that an in force scheme under the *Professional Standards Act 2005* allows.

ADDITIONAL GUIDANCE

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