

Treasurer's Instruction No	1109
Title	Procurement Documentation and Receipt and Opening of Submissions: goods and services
Effective date	30 December 2018
Objective and Background	Provides instruction on the requirements for procurement documentation and the process to be adopted in relation to the receipt and opening of submissions.
Version Number	16

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 on the [Purchasing website - Buying for Government](http://www.purchasing.tas.gov.au) (www.purchasing.tas.gov.au).

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 on the [Purchasing website - Buying for Government \(Checklists\)](#).

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.**
- (3) **The specifications for the procurement must address value for money considerations.**

Refer to Instruction 1101 for further information on value for money.

CONDITIONS OF QUOTATION/TENDER AND CONDITIONS OF CONTRACT

- (4) **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.**

Template Request for Tender (RFT) documentation (Goods; Services; Goods and Services; and Information Technology) has been prepared by the Crown Solicitor. Agencies are encouraged to use these pro forma documents.

The Crown Solicitor has also prepared template Request for Quotation documentation (Goods; General Services; and Consultant Services) which may be used by agencies for low risk/low value procurements.

All templates are available on the [Purchasing website - Buying for Government](#).

Agencies should note that the individual components of the templates are interdependent and as such, cannot be used in isolation. If an agency has undertaken a procurement without using the template documentation and requires a contract to be prepared, it should contact the Crown Solicitor for advice.

(5) If an agency chooses to use and then materially amend procurement RFT templates prepared by the Crown Solicitor, the amended documentation must:

- (a) include all mandatory clauses listed in clauses (9) and (10) below; and**
- (b) be submitted to the Crown Solicitor for approval.**

Where other procurement templates prepared by the Crown Solicitor (eg the low risk/low value Request for Quotation templates) are used and materially amended, it is recommended that the Crown Solicitor's advice on any modifications is also sought.

To enable the Crown Solicitor to respond quickly, it is recommended that agencies mark up any changes made to the template documentation.

(6) If an agency chooses to prepare its own Conditions of Tender and/or Contract, the documentation must include all mandatory clauses referred to in clauses (9) and (10) below and be submitted to the Crown Solicitor for approval.

Further information on the steps involved in preparing Conditions of Tender and Contract are available on the [Purchasing website - Buying for Government \(Preparing Documentation\)](#).

(7) The following clauses must be included in Conditions of Quotation and Conditions of Tender prior to issue of the documentation:

- (a) details of the agency's complaints process;**
For further information refer to Instruction 1117.
- (b) the entitlement of unsuccessful persons submitting quotations or tenders to be debriefed;**
- (c) information on the Government's policy on confidentiality and publication/disclosure of contract information;**
For further information refer to Instructions 1401 and 1124.
- (d) a clause on the Government's position on zero tolerance towards violence against women; and**

Examples of clauses can be located in the procurement documentation templates prepared by the Crown Solicitor available on the [Purchasing website - Buying for Government](#).

- (e) for all Conditions of Quotation/Tender associated with the purchase of goods, standard dumped goods clauses must be included to advise that dumped goods will not be accepted.**

Information on the dumped goods policy, standard clauses and where to seek information on goods that may be at risk of being dumped is available on the [Purchasing website - Buying for Government \(Dumped Goods\)](#).

The *Professional Standards Act 2005* provides for the limitation of liability of members of occupational associations in certain circumstances. Given the provisions of the legislation, the requirement for the contractor to agree to the following clauses should be *considered* and, where appropriate, included in the Conditions of Quotation/Tender prior to issue by an agency:

- where no existing applicable Scheme applies, a waiver of rights in respect of any future scheme;
- where a Scheme applies:
 - 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 in force under the *Professional Standards Act 2005* and an agency has determined that such a higher maximum amount should be required, the need for the supplier to ensure the limit of their liability complies with the agency's requirement.

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.

(8) All contracts awarded by an agency must include provisions:

- (a) that provide for a waiver of rights in respect of a future scheme in force under the *Professional Standards Act 2005*;**
- (b) relevant to the Government's position on confidentiality and/or which allow for publication/disclosure of contract information;**

Clauses that allow for disclosure of contract information will be particularly important where an exemption has been approved from the requirements of the Crown Contracts Confidentiality Policy as it will still be necessary for details of the contract and supplier to be published on the Tenders website and in agency annual reports.

- (c) that identify any contract provisions that are to be treated as confidential and the period for which they are to be confidential, (refer to Instruction I401(4));**

For further information refer to Instruction I401.

- (d) in relation to the Government's position on zero tolerance towards violence against women; and**

Examples of clauses can be located in the procurement documentation templates prepared by the Crown Solicitor available on the [Purchasing website - Buying for Government](#).

- (e) **in contracts associated with the purchase of goods, clauses to advise that dumped goods will not be accepted.**

Information on standard dumped goods clauses is available on the [Purchasing website - Buying for Government \(Dumped Goods\)](#).

The *Professional Standards Act 2005* provides for the limitation of liability of members of occupational associations in certain circumstances. Given the provisions of the legislation, the following clauses should also be considered for inclusion in the contract where a Scheme applies:

- subject to the clause below, that the level of the Contractor's liability will be limited in accordance with and subject to the Scheme; and
- to the extent that the Scheme allows, where an agency has determined that a higher maximum liability limit should be required, a clause requiring a contractor to apply for a higher maximum amount of liability.

ISSUING DOCUMENTATION AND ADDENDA

- (9) **Details of suppliers issued with procurement documentation must be recorded in an appropriate manner.**
- (10) **If addenda are issued, copies must be issued to all persons who have been issued with, or downloaded, the procurement documentation.**

All potential suppliers to whom addenda are issued should be requested to confirm receipt of the addenda.

RECEIVING AND OPENING SUBMISSIONS

- (11) **A secure facility must be provided at each designated lodgement location for receipt of submissions.**

A secure facility could include a lockable tender box, the electronic tender box on the Tenders website or secure email/facsimile facilities.

- (12) **The submission relating to any particular procurement is not to be opened until the time set for the closing of submissions has elapsed.**

It is recommended that 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.

- (13) **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.**

- (14) 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.

FREE TRADE AGREEMENT IMPLICATIONS

For procurement impacted by free trade agreement obligations, refer to the publication, *International Procurement Obligations* for additional requirements.