

Treasurer's Instruction No	1207
Title	Major Works Procurement: building and construction/roads and bridges
Effective date	30 December 2018
Objective and Background	Provides instructions on the procedures that agencies must follow for major works procurement for building and construction/roads and bridges.
Version Number	18

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.

PROCUREMENT PROCESSES AND PREQUALIFICATION

(1) All works valued at \$250 000 or over must be treated as major works.

All building and construction/roads and bridges works valued under \$250 000 should be treated as minor works. Refer to Instruction 1206 for further information on minor works.

(2) Open tenders must be called for major works, unless approval for direct/limited submission sourcing is granted in accordance with Instruction 1217. Where local capability exists, at least two tenders must be sought from Tasmanian businesses.

Advertising requirements are set out in Instruction 1209.

A Tasmanian business is defined in Instruction 1213.

(3) Agencies must ensure that major works contracts are awarded only to:

(a) suppliers that have declared that they and their employees and/or sub-contractors hold all the appropriate certifications, accreditations, registrations or licences necessary to undertake the work; and

The reference to appropriate certifications, accreditations, registrations or licences is a reference to the licences or accreditations etc that the contractor(s) must hold in order to undertake the type of work encompassed by the contract (eg a Plumbing Practitioner Licence or Electrical Contractors Licence etc). It does not refer to specific permits such as building or plumbing permits that would be required to be obtained in order to undertake the specific project.

The Crown Solicitor's pro forma procurement documentation contains relevant clauses requesting the information on licences etc and the completion of a statutory declaration. Where Crown Law documentation is not used, then agencies must liaise with Crown Law for assistance with the inclusion of relevant provisions.

An appropriate statutory declaration pro forma, prepared by Crown Law, is available from the [Purchasing website - Buying for Government](http://www.purchasing.treasury.tas.gov.au) (www.purchasing.treasury.tas.gov.au).

(b) appropriately prequalified contractors, where an appropriate prequalification category exists.

An agency may supply tender documentation to a contractor that is not yet prequalified or is not prequalified to the required threshold or category. However, as prequalification is a condition for participation, contractors must be prequalified by the closing date for the tender to enable their submission to be considered for evaluation. As prequalification of contractors may take a number of weeks to finalise, agencies should factor this timeframe into their procurement plan where contractors that are not prequalified are likely to submit tenders. Agencies should direct contractors requiring prequalification assessment to the information on prequalification requirements contained on the Purchasing website at [Winning Government Business - Registering for business](#).

For further information on prequalification, refer to Instruction I215.

- (4) Agencies must ensure that where sub-contractors are to be engaged by a contractor and the value of the work to be undertaken by the sub-contractor is valued at \$250 000 or more, the sub-contractors, where an appropriate prequalification category exists, are also prequalified to the appropriate levels.**
- (5) Agencies must not package works with the intention of circumventing the prequalification thresholds.**
- (6) Where applicable prequalification categories do not exist, agencies must undertake a full tender process that ensures that the recommended tenderer possesses the relevant technical and financial capability, as well as any other capabilities that the agency considers to be relevant to the project.**
- (7) Where an agency wishes to engage a contractor who is not prequalified, and prequalified contractors are registered for the particular work that is being undertaken, an exemption from the requirement to use prequalified contractors may be approved by the Secretary of the Department of Treasury and Finance.**

Such an exemption will only be approved in exceptional circumstances, where conclusive justification of the request is provided. Retrospective exemptions will not be granted.

All exemptions granted, including the reasons for the granting of the exemption, will be disclosed in the Department of Treasury and Finance Annual Report.

- (8) Agencies must ensure that persons submitting bids are dealt with fairly and equitably during the tender process.**
- (9) Submissions for major works tenders must be received in accordance with Instruction I209.**
- (10) Submissions for major works must be evaluated in accordance with Instruction I210 and any contract awarded in accordance with Instruction I211.**

DOCUMENTATION

- (11) The Tender documentation must contain all the information necessary to enable potential suppliers to prepare appropriate submissions in response.**
- (12) Agencies must provide suppliers with at least one electronic option for the lodging of their submission.**

The method used is a matter for the agency to determine ensuring all requirements in relation to handling and confidentiality can be met. Electronic options may include, for

example, the use of the Tenders website electronic lodgement functionality or a secure email or facsimile facility. Where email or facsimile is used:

- the facility should be secure;
- access to the submissions should be controllable to prevent compromising security of responses/confidentiality; and
- access should be auditable and/or documented.

When the Tenders website has been used to advertise a procurement process, the Tenders website electronic lodgement functionality would generally be the preferable electronic option and is recommended, however this is a matter for the agency based on the procurement itself.

- (13) **The specifications must be designed not to restrict competition, reflect bias to any brand, product or contractor, or act as a barrier to the consideration of any alternative.**
- (14) **Agencies must include a provision in tender documentation that advises unsuccessful suppliers of their entitlement to be debriefed.**
- (15) **Agencies must include provisions in the Conditions of Tender and the Conditions of Contract in relation to the Government's position on zero tolerance towards violence against women.**

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

Disclosure

- (16) **Agencies must ensure, by including provisions in the Conditions of Tender and the Conditions of Contract, that general disclosure rights are reserved for the Crown, to enable the public disclosure of relevant contract details.**

For suitable wording see the Conditions of Tender, Crown Solicitor's pro forma RFT: Building and Construction and the *Guide to the Completion of Annexures to AS 2124-1992*.

Building and Construction

- (17) **For all major works construction contracts, except those where the use of AS 4902-2000 or AS 4300-1995 is appropriate, it is mandatory to use AS 2124-1992, General Conditions of Contract and the Request for Tender (Building and Construction version) document approved by Crown Law.**

For non-construction works, such as maintenance, agencies should use appropriate Australian Standard contracts and liaise with the Crown Solicitor to ensure the contracts are appropriately amended to reflect the Government's procurement, confidentiality and contractual policies.

AS 2124-1992 *General Conditions of Contract* is available to download from the SAI Global website at www.saiglobal.com.

AS 4902-2000 or AS 4300-1995, *General Conditions of Contract for Design and Construct*, may be used in appropriate circumstances. It is recommended that Crown Law advice be sought in relation to how this document should be amended to comply with Government procurement requirements.

The Crown Solicitor's major works Request for Tender (Building and Construction version) document is available to download from the [Purchasing website - Buying for Government \(Forms\)](#). Standards Australia has produced the *General Conditions of Contract AS 2124-1992 User Guide SAA HB 42-1992*. All parties involved in the contract, as well as agency project managers, should familiarise themselves with this document.

Roads and bridges

- (18) For all major works construction contracts, except those where the use of AS 4902-2000 or AS 4300-1995 is appropriate, it is mandatory to use AS 2124-1992, General Conditions of Contract and the appropriate approved Preliminaries/Request for Tender document.**

For non-construction works, such as maintenance, agencies should use appropriate Australian Standard contracts and liaise with the Crown Solicitor to ensure the contracts are appropriately amended to reflect the Government's procurement, confidentiality and contractual policies.

FREE TRADE AGREEMENT IMPLICATIONS

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

CONFIDENTIALITY IN THE PROCUREMENT PROCESS AND IN RELATION TO CONTRACTS

Agencies should refer to Instructions 1229 and 1401.