

Treasurer's Instruction No	1211
Title	Awarding Contracts: building and construction/roads and bridges
Effective date	23 November 2015
Objective and Background	Provides instructions on the procedures that agencies must follow when awarding contracts relating to building and construction or roads and bridges procurement.
Version Number	9

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 to the procurement of building and construction and roads and bridges and is to be read in conjunction with other Instructions relating to such procurements which are contained in the 1200 series of the Treasurer's Instructions.**

Further information on building and construction procurement, including a definition of "building and construction" and "roads and bridges" and information on the types of services that fall under these categories is located on the [Purchasing website - Buying for Government](http://www.purchasing.tas.gov.au) (www.purchasing.tas.gov.au).

For information in relation to procurement of goods and non-construction related services, refer to the 1100 series of the Treasurer's Instructions.

This Instruction does not provide information relating to 'contract management', for information relating to the management of contracts please refer to the information located on [Purchasing website - Buying for Government](#).

- (2) Agencies must ensure that the contract which is to be entered into names the 'The Crown in Right of Tasmania' as the contracting party except where a statute specifically confers contracting power.**

The *Crown Proceedings Act 1993* stipulates that where a Minister contracts, he or she contracts not in their own right but on behalf of the Crown.

Examples of a statute conferring contracting power includes the Director of Housing under the *Homes Act 1935* or a corporate body such as the Forestry Corporation under the *Forestry Act 1920*.

- (3) Prior to awarding a contract an agency must ensure that:**

- (a) the preferred supplier has identified all the appropriate certifications, accreditations, registrations or licences necessary to undertake the work;**

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.

- (b) the preferred supplier has completed a statutory declaration that it, and its employees and/or sub-contractors, hold all such certifications, accreditations, registrations or licences; and**

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](http://www.purchasing.tas.gov.au) (www.purchasing.tas.gov.au).

Information on relevant licences etc may be obtained from the Director, Building Standards and Occupational Licensing, Department of Justice.

- (c) where prequalification is used:**

(i) the information in the submission relating to the preferred supplier's prequalification status, threshold and category corresponds with the information held by either the Department of Treasury and Finance or the Department of State Growth; and

(ii) for projects impacted by the National Prequalification System for Non-residential Building (the NPS), the agency undertakes an assessment of the financial capacity of the preferred contractor prior to referring the evaluation to the agency's Procurement Review Committee.

It is important that agencies protect the interests of the Crown by awarding contracts only to legal entities that have the:

- appropriate certifications, accreditations, registrations and licences required to undertake the work; and
- financial capacity to execute and complete the work under the contract.

As a prequalification financial assessment may have occurred up to two years prior to the tender, it is considered inappropriate to rely solely on that assessment for all projects. It is the responsibility of agencies to ensure that a contractor remains financially viable prior to awarding a contract.

Details of contractors and consultants prequalified for building and construction projects with Treasury are located on the Tenders website at www.tenders.tas.gov.au. An eTendering login is required to access the lists.

Information on the NPS (for all non-residential building procurement with a construction cost estimate of \$50 million or above) can be located on the [Purchasing website - Buying for Government \(Prequalification\)](#); or from the Manager, Contracts, Procurement and Property Branch, Department of Treasury and Finance, phone (03) 6166 4216; or by email to prequalified@treasury.tas.gov.au.

The Department of State Growth administers a prequalification system for roads and bridges based on the Austroads *National Prequalification System for Civil (Road and Bridge) Construction Contracts*. Further information on DSG prequalified contractors is located

on the following website
http://www.transport.tas.gov.au/road/contractor/contract_tenders.

- (4) **In accordance with Instruction 1218, all agency evaluations for procurements valued at \$100 000 or more (excluding GST) must be referred to the agency's Procurement Review Committee, prior to any advice being provided to suppliers on the outcome of the procurement process and before negotiations are entered into with the preferred supplier and/or the contract is awarded.**

Further information on Procurement Review Committees is located in Instruction 1218.

- (5) **For all building and construction/roads and bridges major works procurements, a recommendation as to the preferred tenderer must be made to the Head of Agency for approval.**

The Head of Agency is responsible for the approval of the preferred tenderer and this responsibility cannot be delegated. The signing of the contract may occur in accordance with the agency's procurement delegations as determined in accordance with Instruction 1203.

- (6) **For all building and construction/roads and bridges non-works procurements (eg consultancies) valued at \$100 000 or more (excluding GST), a recommendation as to the preferred tenderer must be made to the Head of Agency for approval.**

The Head of Agency is responsible for the approval of the preferred tenderer and this responsibility cannot be delegated. The signing of the contract may occur in accordance with the agency's procurement delegations as determined in accordance with Instruction 1203.

- (7) **Contracts must only be awarded to recognised legal entities.**

- (8) **All suppliers submitting a quotation or tender must be advised of the outcome of the procurement process and provided with details of the successful offer including the name of the supplier and the price accepted.**

- (9) **Where provisions of a free trade agreement apply, on request, the agency must promptly provide the supplier with a written explanation of the reasons that its tender application was not selected.**

Refer to Instruction 1202 for further information on free trade agreements.

- (10) **Unsuccessful suppliers must, on request, be debriefed.**

Any debrief should examine areas of non-compliance with a view to developing the supplier's ability to successfully quote for future requirements.

- (11) **Agencies must ensure that any revised tender estimates or negotiations in relation to price or services are fully documented and that any amendments are incorporated into the contract established between the Crown and the contractor/consultant.**

- (12) **All contracts awarded with a value of \$50 000 or more must be reported in accordance with Instructions 1212 and 1213.**

PROCUREMENTS IMPACTED BY FREE TRADE AGREEMENTS

- (13) Any procurement that is impacted by a free trade agreement (refer to Instruction I202) must, in addition to the requirements above, comply with the requirements set out in the *Free Trade Agreements Guideline*.**

The Guideline can be located on the [Purchasing website \(Publications\)](#).