

Treasurer's Instruction No	1228
Title	Performance Security and Retention Moneys for major works projects: building and construction/roads and bridges
Effective date	1 May 2013
Objective and Background	Details the security required in relation to major works projects.
Version Number	7

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 building and construction and roads and bridges major works procurement contracts 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.**

An agency may choose to apply the same principles to minor works contracts at its discretion.

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.

- (2) **An agency shall ensure that a contractor provides security in relation to all major works contracts. Alternatively, the agency at its discretion may elect to allow a contractor to provide retention moneys either instead of or in addition to security.**

Consideration of whether the agency is to allow retention moneys should be undertaken during the agency's risk assessment of the project.

- (3) **The total amount of security and/or retention moneys required under any particular contract shall be five per cent (5%) of the contract sum up to a contract sum limit of \$500 000 plus three per cent (3%) of the amount by which the contract sum exceeds \$500 000.**

- (4) **Where an agency elects to allow a contractor to provide retention moneys, either in full or in addition to security, the agency is to deduct retention moneys from progress payments at a rate of 10 per cent (10%) until the amount of retention held, plus any security held, equals the required security levels detailed in clause (3).**

Agencies have been granted a standing approval by the Treasurer to retain retention moneys in their operating accounts for future payment in a later financial year, subject to agencies following the normal review and approval process for carrying forward balances at the end of each financial year.

The security/retention amount referred to above may be managed and adjusted to reflect the value of all outstanding works to be provided by the contractor for that agency (where contracted to complete a number of projects over similar/overlapping periods with the agency).

- (5) Security for Government contracts shall be in the form of an unconditional bank guarantee given by an approved financial institution or an unconditional performance bond given by an insurance company approved by the Crown.**

A list of approved bond providers is maintained by the Department of Treasury and Finance. The list, together with further information on security, is available on the [Purchasing website - Buying for Government \(Performance Security and/or retention moneys\)](#).

- (6) Where an agency chooses to accept security from a provider not approved by Treasury, agencies must ensure the security meets the following conditions:**

- a) the security is in the form of an unconditional and irrevocable undertaking to pay on demand; and
- b) the security provider must:
 - i) operate in Australia;
 - ii) have a credit rating threshold of A- or above as assessed by Standard and Poor's or equivalent; and
 - iii) either be regulated by the Australian Prudential Regulation Authority (APRA) or, if not regulated by APRA, limit the total value of its performance bonds held by the agency to a maximum value of 10 per cent of its net tangible assets.

Where an agency is considering accepting security from a provider which is not incorporated in Australia it is crucial that the agency first seek advice from the Crown Solicitor to identify the risks and determine how these may be mitigated.

For a list of security providers subject to APRA regulation and further information on APRA in general, refer to www.apra.gov.au.