

TREASURER'S INSTRUCTION
FINANCIAL MANAGEMENT ACT 2016
PROCUREMENT PROCESSES - MARKET APPROACHES

EFFECTIVE DATE

21 February 2020

SCOPE

This Treasurer's Instruction applies to all Agencies listed in Column I of Schedule I, Part I in the *Financial Management Act 2016*.

APPLICATION

At all times.

OBJECTIVE

To provide information on the approved market approach methods and the requirements in relation to publication of notices.

INSTRUCTION**Interpretation and Definitions**

Refer to Treasurer's Instruction PF-6 for general definitions. Variations specific to this Treasurer's Instruction are set out below.

Market approaches

- 2.1 For *procurement* valued at less than \$50 000, other than that referred to in clause 2.2, the market approach is to be determined by the Agency.
- 2.2 For *procurement of prequalified consultants* for building and construction / roads and bridges, one of the following market approach methods must be adopted:
 - 2.2.1 for procurements that are not *covered procurements* - either:
 - single submission sourcing for projects with a capital value up to and including \$1 million or a consultants fee of \$100 000 or less; or
 - multiple submission sourcing for projects with a capital value greater than \$1 million or a consultants fee of more than \$100 000;

- 2.2.2 for *covered procurements* - an *Open Tendering* process or an expression of interest / request for proposal multi stage procurement process where the first stage of the process is open; or
 - 2.2.3 *Limited tendering*, in the circumstances, and in accordance with the requirements, set out in clauses 2.15 to 2.19.
- 2.3 For all other *procurement*, a market approach appropriate to the *procurement* in accordance with the attached table must be adopted.

Market approach options

Procurement Value	Quotation process - clause 2.9 (includes quotations where inclusion on a multi-use list is a condition for participation)	Open tendering (includes open tendering where inclusion on a multi-use lists is a condition for participation)	Selective tendering - clauses 2.10-2.12 (expressions of interest/request for proposals)	Selective tendering - clause 2.13 (purchasing from an agency established multi-use list)	Limited tendering - clauses 2.15-2.18
Goods and Services					
\$50 000 or more but less than \$250 000	✓	✓	✓	✓	✓
\$250 000 or more		✓	✓	✓	✓
Building and construction works - where using prequalified contractors					
\$50 000 or more but less than \$250 000	✓	✓	✓		✓
\$250 000 or more		✓	✓		✓
Building and construction works - where using non prequalified contractors					
\$50 000 or more but less than \$250 000	✓	✓	✓	✓	✓
\$250 000 or more		✓	✓	✓	✓
Roads and bridges works - where using prequalified contractors					
\$50 000 or more but less than \$500 000	✓	✓	✓		✓
\$500 000 or more		✓	✓		✓
Roads and bridges works - where using non prequalified contractors					
\$50 000 or more but less than \$500 000	✓	✓	✓	✓	✓
\$500 000 or more		✓	✓	✓	✓

Procurement Value	Quotation process - clause 2.9 (includes quotations where inclusion on a multi-use list is a condition for participation)	Open tendering (includes open tendering where inclusion on a multi-use lists is a condition for participation)	Selective tendering - clauses 2.10-2.12 (expressions of interest/request for proposals)	Selective tendering - clause 2.13 (purchasing from an agency established multi-use list)	Limited tendering - clauses 2.15-2.18
Building and construction / Roads and bridges consultants - where using non-prequalified consultants					
\$50 000 or more but less than \$250 000	✓	✓	✓	✓	✓
\$250 000 or more		✓	✓	✓	✓

Multi-use lists

- 2.4 The Department of Treasury and Finance's prequalification of contractors and consultants and the Department of State Growth's prequalification of Roads and Bridges Construction *Contracts* operate as *multi-use lists* and must be established and maintained by those Agencies in accordance with the requirements in clauses 2.7 and 2.8.
- 2.5 Agencies are permitted to establish a *multi-use list* for the *procurement of goods and services* and for building and construction/roads and bridges *procurement* where the schemes referred to in clause 2.4 do not apply.
- 2.6 When established in accordance with clauses 2.7 and 2.8, an Agency is permitted to:
- 2.6.1 include participation on the *multi-use list* as a condition for participation in an *Open tendering* process; or
 - 2.6.2 use the *multi-use list* as the basis for selecting participants in a *selective tendering* process in accordance with clause 2.13 below.
- 2.7 To establish a *multi-use list* the Agency must:
- 2.7.1 either annually issue a notice inviting interested suppliers to apply for inclusion on the list or make the notice available in a continuous electronic form; and
 - 2.7.2 include on the list, all potential suppliers that satisfy the conditions for participation as soon as practicable.
- 2.8 The notice referred to in clause 2.7.1 must be published on the Tenders website and include:
- 2.8.1 a description of the goods, services or works categories for which the list may be used;
 - 2.8.2 the conditions for participation to be satisfied by suppliers and the methods that will be used to verify a supplier's satisfaction of the conditions;
 - 2.8.3 the name and address of the Agency establishing the list and other information necessary to contact that Agency and obtain all documentation relating to the list; and
 - 2.8.4 deadlines for submission of applications for inclusion on the list (if any).

Quotation processes

- 2.9 When an Agency undertakes a *quotation process*, it must seek a minimum of three written submissions from identified suppliers.

Selective tendering

Expressions of Interest and Requests for Proposal

- 2.10 An Agency is permitted to use an expression of interest or request for proposal process as the basis for the inviting suppliers to submit a bid/tender provided:
- 2.10.1 a notice in accordance with clause 2.20 is published requesting interested suppliers to submit an expression of interest/proposal together with any specific information requested in the notice; and
 - 2.10.2 an invitation to submit a bid/tender is issued to all the suppliers that respond, unless the notice referred to in clause 2.10.1 stated that the suppliers that will be invited to participate may be limited and the notice or the documentation issued included the relevant requirements and evaluation criteria for shortlisting the potential suppliers.
- 2.11 Where suppliers to be approached to submit a bid/tender are to be limited, in determining the suppliers that will be invited to participate in subsequent stages, the Agency must:
- 2.11.1 in assessing the technical ability, assess the extent to which an application meets the technical and performance specifications of the *procurement*;
 - 2.11.2 limit the number of suppliers invited to participate based on its rating of applications, provided that the largest number of potential suppliers is selected that is consistent with an efficient process; and
 - 2.11.3 not directly engage a shortlisted party unless *limited tendering* is approved.
- 2.12 The Agency must ensure that suppliers are provided with, as part of the initial approach to the market, the evaluation criteria that will be used to make decisions at each stage of the process. Evaluation criteria used to make a decision at the first stage of a process must be consistent with the criteria to be used at any subsequent stage.

Multi-use lists

- 2.13 Except for *procurement* from the Department of Treasury and Finance's Prequalification Scheme (Contractors) *multi-use list* and the Department of State Growth Prequalification System for Roads and Bridges Contractors *multi-use list*, an Agency is permitted to invite suppliers from a properly established *multi-use list* to participate in a *procurement*. Subject to the exceptions in clause 2.14, suppliers must be invited to respond as follows:
- 2.13.1 for *procurement* valued at less than \$50 000, the number of suppliers to be approached is to be determined in the same manner as set out in clause 2.1;

- 2.13.2 for *procurement* valued at \$50 000 or more but less than \$250 000, written submissions must be sought from at least three suppliers included on the list; or
- 2.13.3 for *procurement* valued at \$250 000 or more, written submissions must be sought from all suppliers who are included on the list.
- 2.14 With respect to the Department of Treasury and Finance Prequalification Scheme (Consultants) and the Department of Treasury and Finance Probity Adviser Directory, suppliers must be approached as set out below:
- 2.14.1 for the Department of Treasury and Finance Prequalification Scheme (Consultants) - for *procurement* which is not a *covered procurement*, in accordance with the requirements set out in clause 2.2.1; and
- 2.14.2 for the Department of Treasury and Finance Probity Adviser Directory -
- for engagement of a probity adviser for a *contract* valued at \$50 000 or less, the number of suppliers to be approached is to be determined in the same manner as set out in clause 2.1;
 - for engagement of a probity adviser for a *contract* valued at more than \$50 000 but less than \$250 000, written submissions must be sought from at least three suppliers included on the list with an area of specialisation relevant to the project; and
 - for engagement of a probity adviser for a *contract* valued at \$250 000 or more and which is not a *covered procurement*, agencies must approach all suppliers included on the directory with an area of specialisation relevant to the project.

Limited tendering

Limited tendering from businesses that predominantly exist to provide the services of persons with a disability

- 2.15 The Accountable Authority is permitted to approve use of a *limited tendering* market approach for the *procurement* of goods, services or works from a business that predominantly exists to provide the services of persons with a disability, where satisfied that:
- 2.15.1 for an Australian entity, the business is approved as an Australian Disability Enterprise; or
- 2.15.2 for any other entity, a predominant proportion of employees are persons with a disability, or its predominant purpose is providing employment to persons with a disability.
- 2.16 Agencies must maintain auditable documentation with sufficient information to justify how the supplying entity meets the requirements of clause 2.15.

Direct sourcing from other agencies

2.17 An Agency is permitted to procure directly from another Agency without undertaking the usual prescribed *procurement* methods and processes, including reporting and compliance with the Government's confidentiality policy.

Limited tendering - specific circumstances (direct/limited submission sourcing)

2.18 The Accountable Authority is permitted to approve use of a direct sourcing or limited submission sourcing approach where the following circumstances apply:

2.18.1 Where, in response to an invitation to participate in a *selective tendering* process or invitation to tender in an *open tendering* process:

- no responses or tenders were submitted;
- no responses or tenders were submitted that conformed to the essential requirements in the documentation; or
- no suppliers satisfied the conditions for participation;

and the procuring Agency does not substantially modify the essential requirements of the procurement;

2.18.2 Where the goods or services (including *works*) can be supplied only by a particular supplier and no reasonable alternative or substitute exists for the following reasons:

- the requirement is for works of art;
- the protection of patents, copyrights, or other exclusive rights, or proprietary information; or
- due to an absence of competition for technical reasons;

2.18.3 For additional goods or services (including *works*) by the original supplier (or authorised representative of the supplier) that were not included in the initial procurement, where a change of suppliers for such additional goods or services:

- cannot be made for technical reasons such as requirements of interchangeability or interoperability with existing software, services or installations procured under the initial procurement, or due to conditions under original supplier warranties; and
- would cause significant inconvenience or substantial duplication of costs for the Agency;

2.18.4 For goods purchased on a commodity market;

- 2.18.5 Where an Agency procures a prototype or a first good or service (including *works*) that is intended for limited trial or that is developed at its request in the course of, and for, a particular *contract* for research, experiment, study or original development - not including quantity production or supply to establish commercial viability or to recover research and development costs;
- 2.18.6 In so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the Agency, the goods or services (including *works*) could not be obtained in time using an *open tendering* or a *selective tendering* process;
- 2.18.7 For purchases made under exceptionally advantageous conditions that only arise in the very short term, such as from unusual disposals, unsolicited innovative proposals, liquidation, bankruptcy or receivership and not for routine purchases from regular suppliers;
- 2.18.8 In the case of a *contract* awarded to the winner of a design contest provided that the contest:
- has been organised in a manner that is consistent with the requirements of the Treasurer's Instructions; and
 - is judged by an independent jury with a view to a design *contract* being awarded to the winner;
- 2.18.9 For building and construction / roads and bridges:
- the work is of a specialised nature which a limited number of suppliers are capable of carrying out; or
 - the circumstances justify limiting the number of suppliers; or
- 2.18.10 For all other *procurement*:
- the cost to the Agency and to suppliers of seeking submissions, including expressions of interest or requests for proposal, or adopting an *open tendering* methodology would outweigh the value for money benefits of adopting those methods;
 - exceptional circumstances exist that justify the use of *limited tendering* rather than seeking submissions or undertaking an *open tendering* process.
- 2.19 Approval must be granted, in writing, prior to commencing negotiations with suppliers or seeking direct or limited submissions. Agencies must maintain auditable documentation regarding the approval, containing sufficient information to justify the use of direct sourcing or limited submission sourcing.

Publishing procurement notices on the Tenders website

2.20 A notice calling for tenders or submissions must be published on the Tenders website for all *open tendering*, expressions of interest and requests for proposal at the commencement of the procurement period.

ADDITIONAL GUIDANCE

Further information in support of this Treasurer's Instruction, including guidance on when to use single or multiple submission sourcing in the context of clause 2.2.1, can be found in the Procurement Processes Better Practice Guidelines.