

Procurement Policy Circular

PC25: Select and Single Select Procurement

INTRODUCTION

This Circular provides information for Territory entities on the procurement of goods, services and works by select or single select procurement.

Select and single select procurement may be referred to by various other terms, including 'limited sourcing', 'direct sourcing', 'select tender', and 'single select tender'.

'Select or single select procurement' is used in this circular to mean a procurement above the relevant quotation or tender threshold that needs an exemption from the quotation and tender requirements of the *Government Procurement Regulation 2007* from the responsible Director-General or delegate.

A procurement that seeks a single quotation or three quotations in accordance with the quotation and tender requirements (that is, a procurement that does not need an exemption) is not referred to as a select or single select procurement.

QUOTATION AND TENDER REQUIREMENTS

Sections 5, 6 and 9 of the *Government Procurement Regulation 2007* ('Regulation') prescribe the method of the approach to market required for procurements at or above stated thresholds. These are outlined in the table below.

Quotation and Tender Requirements: Goods, Services and Works	
Section 5	Under \$25,000 - must seek at least one oral quotation from a supplier and ensure written evidence of quotation and approval.
Section 6	\$25,000 to under \$200,000 - must seek at least three written quotations from suppliers.
Section 9	\$200,000 or more - must invite public tenders.

DIRECTOR-GENERAL EXEMPTION PROVISION

Section 10 of the Regulation allows that the responsible Director-General* may exempt a procurement from the requirements of section 6 or 9, as long as they are satisfied, on reasonable grounds, that the benefit of not complying with the requirement outweighs the benefits of complying with the requirement.

Value for Money

It is important to note that section 22A of the *Government Procurement Act 2001* ('Act') – to which the Regulation is subordinate and therefore cannot override – prescribes that a Territory entity 'must pursue value for money in undertaking any procurement activity.' Value for money means the best procurement outcome, having regard for:

- probity and ethical behaviour;
- management of risk;
- open and effective competition;
- optimising whole of life costs; and
- anything else prescribed by regulation (for example, quotation and tender requirements).

A Director-General may only exempt a procurement from the requirements of section 6 or 9 of the Regulation if the above aspects of value for money are taken into account.

A Director-General may only exempt a procurement from the requirements of the quotation and tender thresholds if satisfied that the best value for money will be achieved.

Assessing value for money for single select procurements

An exemption made under Section 10 of the Regulation does not remove the requirement to undertake a value for money assessment.

When utilising a single select process, the Territory entity should still seek a response to approved assessment criteria and evaluate the response against those criteria, having regard to the value for money principles. A risk plan should also be prepared, noting that single select tenders entail the potential for claims that there has been an unfair or uncompetitive process. The relevant Territory entity should also prepare an evaluation report to document that the selected supplier is able to meet the assessment criteria. The evaluation report may take the form of a minute to the relevant Director-General or delegate but is required to demonstrate that value for money has been pursued,

* The Regulation refers to 'responsible chief executive officer', which means: for a directorate, the responsible director-general; or, for a Territory authority, the chief executive officer, under the *Financial Management Act 1996*. This Circular uses 'Director-General' to mean the head of any Territory entity.

in accordance with the legislation, and that the process and decision have been adequately documented.

ACCEPTABLE REASONS FOR USE OF EXEMPTION PROVISION

The Regulation provides examples for acceptable reasons for a responsible Director-General to exempt a procurement from the requirements of section 6 or 9 of the Regulation. This is a non-exhaustive list and a Director-General may exempt a procurement from the requirements in other circumstances, as long as he or she is satisfied that this would deliver the best procurement outcome, that is, the best value for money.

Even where a Director-General uses one of the reasons provided in the example in the Regulation to exempt a procurement, a value for money assessment must still be conducted.

The examples provided in the Regulation for a Director-General to exempt a procurement from the quotation and tender requirements are:

- only 1, or a limited number of, suppliers is available because of a need to buy equipment that is compatible with existing equipment, or because of a supplier's specialist knowledge;
- only 1 supplier can supply a particular good or service;
- standardisation of a product is agreed after public tenders are called for the original equipment;
- the time within which a particular procurement activity must be completed prevents public tenders being called;
- where a secondary objective of the procurement is to achieve an appreciable social or community benefit; and
- the procurement is through a common use arrangement established by another jurisdiction.

Further information on social or community benefits resulting from procurement (known as 'social procurement') is available from Procurement Circular PC02.

FREE TRADE AGREEMENTS AND SELECT AND SINGLE SELECT TENDERING

As well as considering the value for money that would be achieved through exempting the procurement from the requirements of the quotation and tender thresholds in the Regulation, a Director-General will need to ensure compliance with any Free Trade Agreements (FTAs) to which the Territory is a signatory when he or she is deciding whether to approve a select or single select procurement.

Current FTAs to which the Territory is a party include the Australia-United States Free Trade Agreement (AUSFTA) and the Australia-Chile Free Trade Agreement (ACFTA).

The circumstances in which the AUSFTA allows the Territory to conduct a select or single select tender for covered procurements are outlined in [Attachment A](#).

Note that Shared Services Procurement uses the AUSFTA as a reference point when considering how Territory procurements should be conducted to comply with FTAs because meeting the requirements of the AUSFTA will ensure compliance with the other FTAs. For information on ACT Government Procurement and FTAs, including information on what procurements are covered by the FTAs, refer to PC03.

RESOURCES

Procurement Circulars, which provide information on a range of procurement-related matters, are available from http://www.procurement.act.gov.au/about_us/procurement_policy.

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ATTACHMENT A

AUSFTA CIRCUMSTANCES FOR CONDUCTING SELECT/SINGLE SELECT TENDERS

As noted above, the AUSFTA is used as the standard for complying with FTAs. The AUSFTA allows the Territory to conduct select or single select tendering (or 'limited tendering') for covered procurements in the following circumstances.

- The Territory has issued a prior invitation to tender, and
 - no tenders were submitted; or
 - no tenders were submitted that conform to the essential requirements in the tender documentation; or
 - no suppliers satisfied the conditions for participation,and the essential requirements of the procurement are not substantially modified for the select/single select tender.
- The goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for the following reasons:
 - the requirement is for works of art; or
 - the protection of patents, copyrights, or other exclusive rights, or proprietary information; or
 - due to an absence of competition for technical reasons.
- Additional deliveries of goods or services by the original supplier or authorized representative are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services, or installations, where a change of supplier would compel the Territory to procure goods or services that do not meet requirements of interchangeability with existing equipment.
- The Territory is purchasing goods on a commodity market (that is, a market for the exchange of raw or primary products).
- The Territory is procuring a prototype or a first good or service that is intended for limited trial or that is developed at the Territory's request in the course of, and for, a particular contract for research, experiment, study, or original development.
- As far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseen by the Territory, the goods or services could not be obtained in time under tendering procedures consistent with Articles 15.4 through 15.7 of the AUSFTA (basically, a public tender open for at least 30 days unless pre-tender notification has been conducted).
- The Territory is procuring new construction services consisting of the repetition of similar construction services that conform to a basic project for which an initial contract was awarded following a public tender (or use of a panel following a public tender) and for which the Territory

has indicated in the initial notice of intended procurement that limited tendering procedures might be used in awarding contracts for those construction services.

- The Territory is procuring under exceptionally advantageous conditions that only arise in the very short term, such as from unusual disposals, unsolicited innovative proposals, liquidation, bankruptcy, or receivership.
- A contract is being awarded to the winner of a design contest, provided that:
 - the contest has been organized in a manner that is consistent with the AUSFTA; and
 - the contest is judged by an independent jury with a view to a design contract being awarded to the winner.

The AUSFTA requires that, for each contract awarded in accordance with the above, the Territory prepares a written report that includes the name of the procuring entity, the value and kind of goods or services procured, and a statement indicating the circumstances and conditions that justify the use of a select or single select tender. This requirement is consistent with the Territory's record keeping requirements and practices and should be done for any select/single select tender, not only those that are covered by FTAs.