

South Australia

# **Treasurer's Instructions 18 — Procurement**

under the *Public Finance and Audit Act 1987*

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## **Contents**

1	Short title
2	Commencement
3	Objects
4	Definitions
5	Meaning of procurement
6	Determining the value of a procurement
7	Dividing procurements
8	Public authorities must have a procurement framework
9	Alignment of public authorities
10	Procurement reporting
11	Approval for approach to market
12	Registers
13	Additional responsibilities of Chief Executives
14	Interpretation
15	Transitional

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### **1—Short title**

These instructions form part of the *Treasurer's Instructions (General)* and may be referred to as the *Treasurer's Instructions 18 — Procurement*.

### **2—Commencement**

These instructions come into operation on 20 February 2023.

### **3—Objects**

The objects of these instructions are to—

- (a) promote good governance, contract management, transparency and record keeping by public authorities in the course of planning and undertaking procurements which create liabilities or potential liabilities for expenditure by public authorities; and
- (b) promote compliance with whole-of-government procurement policies; and
- (c) provide for reporting to the Department of Treasury and Finance about procurements by public authorities; and
- (d) make Chief Executives of public authorities responsible for procurements by the public authority and for determining public authority-specific procurement arrangements.

## 4—Definitions

- (1) Terms defined in the *Public Finance and Audit Act 1987* will have the same meaning in these instructions as they have under the Act.
- (2) In these instructions—

***approach to market*** means the formal process of notifying 1 or more potential suppliers of a procurement opportunity and inviting them to submit a response, quote, proposal or offer;

***asset*** of a public authority means—

- (a) a present, contingent or future legal or equitable estate or interest in any goods or property of a public authority; or
- (b) a present, contingent or future right, power, privilege or immunity in relation to goods of, or services provided by, a public authority;

***construction project*** is a project that primarily involves the procurement of a construction work and includes —

- (a) the acquisition and installation of fixtures, plant, equipment, appliances and fittings in conjunction with the construction work; and
- (b) the acquisition of survey, planning, design and other services in conjunction with the construction work,

but does not include the acquisition of goods and services for the ongoing maintenance of a building or structure;

***construction work*** means—

- (a) building work (which has the same meaning as in the *Building Work Contractors Act 1995*); or
- (b) the whole or part of the work of excavating, filling or remediation of land not constituting building work; or
- (c) civil work, which may include (but is not limited to) roads, bridges, sewers, pipelines, railways, industrial plant, bores, dredging and retaining walls;

***Contract Management Policy*** means the policy by that name approved by the Treasurer and administered by Procurement Services SA, establishing the requirements for effective contract management;

***direct market approach*** means a sourcing strategy for a procurement where only 1 supplier is invited to submit an offer;

***expenditure*** means any outflow from the resources of a public authority and may include such things as the payment of money, the transfer of assets, the provision of services, the replacement of an obligation with another obligation, or the conversion of an obligation to equity;

***major project*** means a construction project valued at more than \$50 000 000;

***Procurement Activity and Reporting System*** or ***PARS*** means the software platforms and associated systems and databases administered by Procurement Services SA for the collection, analysis and disclosure of data relating to procurement by public authorities;

*procurement*—see instruction 5;

***Procurement Governance Policy*** means the policy by that name approved by the Treasurer and administered by Procurement Services SA, establishing the governance requirements applying to procurement by public authorities;

***Procurement Planning Policy*** means the policy by that name approved by the Treasurer and administered by Procurement Services SA, establishing the requirements for planning procurements;

***Procurement Services SA*** means the business unit within the Department of Treasury and Finance responsible for strategic advice to government relating to procurement, and administering the procurement policies and guidelines applicable to public authorities;

***secondary procurement process*** means a purchase from an established panel of suppliers conducted in accordance with the approved panel rules;

***Sourcing Policy*** means the policy by that name approved by the Treasurer and administered by Procurement Services SA, establishing the requirements for an approach to market, evaluating a supplier offer, awarding contracts and undertaking post-sourcing reviews;

***South Australian business***—a business is a South Australian business in relation to a procurement if the business operates in South Australia and more than 50% of the workforce delivering the contract resulting from the procurement on behalf of the business are residents of South Australia;

***sponsorship arrangement*** means—

- (a) an arrangement under which a public authority receives sponsorship monies from a non-government party for an event, project or program if the arrangement involves expenditure by a public authority (for example, where the public authority undertakes to purchase goods or services from the sponsor); or
- (b) an arrangement under which a public authority pays money to a non-government party for an event, project or program in exchange for some negotiated benefit in the nature of co-branding or promotion.

## 5—Meaning of procurement

- (1) In these instructions, ***procurement*** means the process undertaken by a public authority for—
  - (a) acquiring goods or services for the public authority, including the acquisition of goods or services on behalf of another public authority or third party (including members of the public); or
  - (b) engaging in a construction project; or
  - (c) disposing of or distributing an asset of the public authority,
 which involves expenditure by a public authority, and does not include the matters set out in subclause (2).

**Note—**

Paragraph (c) would include, for example, the outsourcing of a government function that involves goods or services of the public authority (where the outsourcing involves expenditure by the public authority).

- (2) These instructions do not apply to—
- (a) the provision of funding to a third party by a public authority that is a grant under *Treasurer's Instructions 15 - Grant Funding*; or
  - (b) the engagement of a legal practitioner to provide legal services; or

**Note—**

Public authorities must comply with *Treasurer's Instructions 10 - Engagement of Legal Practitioners* in relation to the engagement of legal practitioners.

- (c) purchase or lease of real property; or
- (d) a sponsorship arrangement; or
- (e) any activity or class of activities determined by the Treasurer to not be a procurement for the purposes of this instruction.

## **6—Determining the value of a procurement**

The value of a procurement for the purposes of these instructions is to be determined by reference to—

- (a) if the procurement consists of the disposal or distribution of an asset—the estimated total value of the asset (determined in accordance with any guidance issued by Procurement Services SA), including any potential revenue that will be lost to the public authority as a result of the disposal or distribution, and any costs associated with the disposal or distribution (for example, valuation, consignment or auction costs); or
- (b) in any other case—the budget required by the public authority to meet the estimated total value of any expenditure commitments that may directly result from the proposed procurement (inclusive of GST).

## **7—Dividing procurements**

- (1) Subject to subclause (2), a person must not take any action to divide a procurement into separate procurements for the purpose of avoiding any value or complexity thresholds applicable under the Procurement Planning Policy or the Sourcing Policy.
- (2) A major project above \$500 000 000 must be divided into stages or components for procurement purposes unless an approval is given under instruction 11(5).

## **8—Public authorities must have a procurement framework**

The Chief Executive of a public authority must ensure that—

- (a) a robust and transparent procurement framework for the public authority, prepared in accordance with the Procurement Governance Policy, is developed, documented, implemented and maintained; and
- (b) an internal review of the suitability of the public authority's procurement framework is conducted at least once in each financial year of the public authority; and

- (c) systems, processes and procedures are put in place to maximise compliance with the Procurement Governance Policy, the Procurement Planning Policy, the Sourcing Policy and the Contract Management Policy.

## 9—Alignment of public authorities

- (1) A Chief Executive of a public authority (the *Aligned Public Authority*) may agree in writing with the Chief Executive of another public authority (the *Host Public Authority*) to use the procurement framework of the Host Public Authority.
- (2) A Minister may, by written instrument, direct a public authority (the *Aligned Public Authority*) to use the procurement framework of another public authority (the *Host Public Authority*).
- (3) Where 2 public authorities become aligned under subclause (1) or (2)—
  - (a) the Chief Executive of the Aligned Public Authority—
    - (i) must notify Procurement Services SA of the agreement or direction (as the case may be) within 60 calendar days of the agreement or direction; and
    - (ii) will be taken to comply with the Chief Executive's obligations under instructions 8, 13(b), 13(e) and 13(g) ; and
  - (b) a procurement for the Aligned Public Authority can be undertaken by either the Aligned Public Authority or the Host Public Authority; and
  - (c) provision of information to Procurement Services SA through the PARS for the purposes of instructions 10(1), 10(2), 10(3), 11(1) and 11(6) can be undertaken by either the Aligned Public Authority or the Host Public Authority; and
  - (d) an approval for an approach to market for the Aligned Public Authority may, for the purposes of instruction 11(1), be given and certified by the Chief Executive of either the Aligned Public Authority or the Host Public Authority, or a person authorised by either of those Chief Executives; and
  - (e) an approval for the purposes of instruction 11(3) or (4) may be given by the Chief Executive of either the Aligned Public Authority or the Host Public Authority.
- (4) An agreement in writing between the Chief Executives under subclause (1) must detail the respective responsibilities of each public authority in relation to procurements for the Aligned Public Authority, including responsibilities for—
  - (a) the provision of information to Procurement Services SA through the PARS for the purposes of instructions 10 and 11; and
  - (b) approvals for the purposes of instruction 11(1), (3) and (4) (if relevant); and
  - (c) undertaking of procurements of the Aligned Public Authority; and
  - (d) keeping and maintaining the departure register under instruction 12(1)(b); and
  - (e) releasing major projects within 30 days under instruction 11(6).

- (5) Where 2 public authorities become aligned under subclause (2), the Host Public Authority will be responsible for the matters referred to in paragraphs (a) to (e) of subclause (4), subject to—
  - (a) any instructions of the Minister contained in the written direction under subclause (2); or
  - (b) any agreement in writing between the Chief Executive of the Aligned Public Authority and the Chief Executive of the Host Public Authority.
- (6) Subject to subclauses (3) and (5), an alignment under subclause (1) or (2) does not relieve the Aligned Public Authority or its Chief Executive from the obligations contained in these instructions.

## **10—Procurement reporting**

- (1) By 1 July of each calendar year, public authorities must provide to Procurement Services SA, through the PARS, a description of—
  - (a) all existing contracted expenditure as a result of a previous procurement above \$55 000 for the previous 12 month period; and
  - (b) all known forecast procurements above \$55 000 for the next 24 month period; and
  - (c) all known forecast procurements for construction projects above \$10 000 000 for the next 36 month period.
- (2) A procurement must be reported to Procurement Services SA through the PARS at least 3 months before an approach to market is made for the procurement, unless the Chief Executive (or authorised person) approves that the procurement is an urgent pressing need that could not have been foreseen.
- (3) Public authorities must use their best endeavours to ensure that the forecast procurements of the public authority reported in PARS remain accurate and up-to-date.
- (4) Public authorities must provide the information required under this instruction in the manner and form required by Procurement Services SA.

## **11—Approval for approach to market**

- (1) A person must not make an approach to market, or cause an approach to market, for any procurement above \$55 000 unless—
  - (a) the procurement has been reported to Procurement Services SA through the PARS in accordance with instruction 10; and
  - (b) the approach to market has been approved by either the Chief Executive of the public authority or a person acting under an authorisation under subclause (2) (up to the limit identified in the authorisation); and
  - (c) the person approving an approach to market under paragraph (b) certifies that the Procurement Planning Policy and the Sourcing Policy have been complied with or that any departures from either of those policies have been sufficiently detailed on the public authority's departure register.

- (2) Subject to subclause (3), the Chief Executive of a public authority may, by instrument in writing, authorise a person or the holder of a specified position to approve an approach to market under subclause (1) subject to such financial limits and other conditions as the Chief Executive specifies in the written instrument.
- (3) Only a Chief Executive can approve an approach to market for a procurement above \$55 000 that involves a direct market approach to a business where the business that is proposed to be the subject of the direct market approach is not a South Australian business in relation to the procurement.

**Note—**

This may be a Chief Executive of a Host Public Authority in the case of an alignment of public authorities under instruction 9.

- (4) However, subclause (3) does not apply to a secondary procurement process.
- (5) Only a Chief Executive can approve an approach to market for a procurement for a major project above \$500 000 000 (and such an approval may only be given if the Chief Executive is satisfied that it is not feasible to divide the project up into stages or components).

**Note—**

This may be a Chief Executive of a Host Public Authority in the case of an alignment of public authorities under instruction 9.

- (6) The Chief Executive of a public authority that is undertaking a major project must ensure that the project is released (in accordance with any guidance issued by Procurement Services SA) within 30 days of funding being available for the project, as far as practicable.

## 12—Registers

- (1) The Chief Executive of a public authority must ensure that the following registers are maintained:
  - (a) an *authorisation register* that sets out—
    - (i) the persons, or the holders of specified positions, who are authorised under instruction 11(2); and
    - (ii) the particulars of any limits, and any conditions, that apply in relation to each such person or position.

**Note—**

This register does not need to be stand-alone and can, for example, be kept together with or form part of the schedule of authorisations granted under the provisions of *Treasurer's Instructions 8 - Financial Authorisation*.

- (b) a *departure register* that sets out—
  - (i) all procurements above \$55 000 where there has been a departure from the Procurement Planning Policy or the Sourcing Policy; and
  - (ii) the particulars of and reasons for those departures.

**Note—**

This responsibility may be discharged by a Chief Executive of a Host Public Authority in the case of an alignment of public authorities under instruction 9.

This register does not need to be stand-alone and can, for example, be kept through reporting all relevant departure information into the PARS.

- (2) The Chief Executive of a public authority must make the registers required by subclause (1) available to Procurement Services SA on request.

### **13—Additional responsibilities of Chief Executives**

The Chief Executive of a public authority must ensure that—

- (a) appropriate resources are allocated to develop, implement and maintain the public authority's procurement framework; and
- (b) responsibility for the procurement framework, including its operation and performance outcomes, is documented and assigned to appropriate senior officers; and
- (c) appropriate resources are allocated to maintain procurement capacity and capability and that appropriate resources are applied to complex or strategic procurements; and
- (d) effective industry engagement and market research is undertaken by the public authority; and
- (e) decision making relating to procurement is appropriately documented, having regard to the complexity of the procurement; and
- (f) appropriate procurement and contract management information management systems are deployed and maintained within the public authority; and
- (g) any failure to comply with the requirements of the public authority's procurement framework is dealt with appropriately; and
- (h) any non-compliance with these instructions is documented and addressed in a reasonable manner and within a reasonable time; and
- (i) appropriate mechanisms to ensure that the Chief Executive is informed about all relevant procurement compliance and governance matters are established and maintained.

**Note—**

The responsibilities of a Chief Executive under this instruction are in addition to, and do not derogate from, any responsibilities of the Chief Executive under any other Act, law or policy.

### **14—Interpretation**

- (1) These instructions should be interpreted and applied in accordance with *Treasurer's Instructions 1 - Interpretation and Application*.
- (2) Additional guidance, forms and resources are available from the Department of Treasury and Finance's extranet ([dtfextra.sa.gov.au](http://dtfextra.sa.gov.au)) and the Procurement Services SA website ([procurement.sa.gov.au](http://procurement.sa.gov.au)).



## 15—Transitional

- (1) Instruction 11(1)(c) does not apply in relation to construction projects above \$165 000.
- (2) The reporting required under instruction 10(1) in relation to procurement for construction projects must, for the year 2023, be completed by 31 March 2023.

**Note—**

This applies to any procurement for a construction project (not just procurements for construction projects above \$10 000 000).