

INTRODUCTION

The National Preference Agreement (NPA), originally signed by the Commonwealth and State Governments, came into effect on 1 July 1986.

As from 1 June 1989 New Zealand joined the NPA on the basis of zero preference margin. New Zealand's participation was facilitated by a review of the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA). Removal of preference margins by the States for New Zealand content meets the objective of Article 11 of ANZCERTA to work towards the elimination of preferences for domestic suppliers in government purchasing. It is in accord with the general 'outward looking' approach of the free trade agreement.

From 1 July 1989 coverage of the agreement was extended to include all services procured by the Parties. However, monetary preferences apply only to 'goods and related services'.

The Agreement was revised in 1991 to incorporate changes arising from agreement reached in discussions between the Parties on items in the Memorandum of Understanding. The Title of the Agreement was changed to the Government Procurement Agreement from July 1991 to reflect the wider range of agreement between the Parties on Government procurement policies and practices.

The Agreement was instigated under the auspices of the Australian Industry and Technology Council AITC but in 1991 the AITC agreed to hand over further development of the Agreement and its administration to the Ministerial Council on Common Services Provision.

The Government Procurement Agreement encourages cooperation in government procurement. It has eliminated the inter-state application of preference schemes and other forms of discrimination based on the State of origin of goods and services in government procurement. The Agreement enables Australian and New Zealand suppliers to compete on equal footing for government contracts in all States and New Zealand. State Governments also benefit from greater competition in tendering.

The Agreement fosters discussions between the Parties with a view to achieving greater uniformity in procurement policies and practices. For example, common Australian contractual, technical and performance standards and specifications are sought.

Changes to the Agreement are negotiated through the Ministerial Council on Common Services Provision (MCCSP) on the advice of the National Supply Group (NSG). NSG membership consists of representatives of the Parties. Complaints about non-compliance with the Agreement are investigated by designated Commonwealth, State and New Zealand bodies and may be referred to NSG. Complaints unresolved by the NSG may be referred to the MCCSP.

PREAMBLE

1. The Governments of the Commonwealth of Australia, New Zealand, New South Wales, Victoria, Queensland, Western Australia, South Australia, Tasmania, the Northern Territory and the Australian Capital Territory; hereinafter called the Parties:

- recognise the benefits to Australian and New Zealand industry and to government purchasing bodies of treating Australia and New Zealand as a single market for government procurement;
- are committed to the achievement of the objectives set out in the Memorandum of Understanding (*see* Annexe 4); and
- agree on the terms of the following agreement, to be known as the Government Procurement Agreement.

PROCUREMENT AGREEMENT

2. It is agreed, except as stated otherwise in this Agreement, that the Parties shall:

- (a) provide to services, products and suppliers of the other Parties equal opportunity and treatment no less favourable than that accorded to their own domestic products and suppliers (*see* Annexe 1);
- (b) promote opportunities for Australian and New Zealand suppliers to compete for government business on the basis of value for money and avoid purchasing practices which are biased in favour of foreign goods and suppliers;
- (c) endeavour to minimise the inclusion of proprietary equipment in Industrial Agreements and subsidiary legislation;
- (d) take all possible steps to ensure a common approach to any apprenticeship and training provisions in procurement policies;
- (e) use value for money as the primary determinant in procurement, including considerations such as quality, price, delivery and service support, using life-cycle or similar costing techniques where appropriate; and
- (f) ensure that their agents comply with the terms of this Agreement.

3. Within this framework the Parties will seek to maximise competitive opportunities in their procurement for Australian and New Zealand suppliers.

EXEMPTIONS

4. Certain bodies, as specified in Appendix 1 of Annexe 2, are exempt from the application of preference margins set out under paragraph 6 but not from other provisions of the Agreement. Also, certain classes of procurement specified in Appendix I of Annexe 2 are exempt from the application of the Agreement except for the monitoring provisions of Paragraph 9.

5. Parties may seek additional exemptions to the Agreement in respect of specific purchasing. Such exemptions will be permitted only with the unanimous agreement of the Ministerial Council on Common Services Provision (MCCSP).

PREFERENCE MARGINS FOR AUSTRALIAN OR NEW ZEALAND MADE GOODS AND SERVICES

6. Where one or more suppliers claim Australian or New Zealand content, the Parties agree to apply preference margins, as follows, when assessing offers for supply of goods and related services:

- New South Wales, Queensland and South Australia: 20 per cent.
- Western Australia, Tasmania and Northern Territory: 10 per cent.

7. Margins will be applied by adding an amount equal to the relevant percentage of the value of non-ANZ content to the total tendered price. The value of non-ANZ content shall be the estimated duty paid value inclusive of the value of any related services (e.g. overseas freight and insurance, consultancy or engineering effort), or any charges of overseas origin, together with Customs clearing charges.

8. New Zealand, the Commonwealth, Victoria, and the Australian Capital Territory will not apply a preference margin to any purchases. For purchases of services alone (unrelated to goods) all Parties will apply zero preference margin.

MONITORING

9. It is agreed that monitoring of compliance with the Agreement will be undertaken by bodies designated by the Parties for this purpose, in accordance with procedures set out in Annexe 3 to this Agreement. The Parties will cooperate in this process.

10. It is agreed that if an issue is not resolved under the procedures in Annexe 3, NSG may report to MCCSP recommending whether action should be taken in respect of the alleged breach. A decision may be taken by MCCSP on whether a breach of the Agreement has occurred and on the appropriate action.

11. The National Supply Group (NSG) will report annually to the MCCSP on the implementation of the Agreement and the achievement of the objectives contained in the Memorandum of Understanding.

ADMINISTRATIVE GUIDELINES

12. Guidelines for the assistance of purchasing officers and other interested bodies may be drawn up by NSG. These will be incorporated in Annexe 6 to the Agreement.

TRANSITIONAL ARRANGEMENTS

13. With regard to procurement arrangements in New Zealand, period contracts and other arrangements or understandings existing at 31 May 1989 are exempt from the application of this Agreement for the period of such contracts or arrangements until 31 May 1994.

REVIEW OF AGREEMENT

14. The Agreement will be reviewed at five-yearly intervals unless otherwise decided by the MCCSP.

15. The Agreement may be amended at any time by unanimous decision of the signatories of the Agreement either at a meeting of the MCCSP or through correspondence between relevant Ministers.

DEFINITIONS

16. The following terms are defined for the purposes of the Agreement.

(a) 'Goods and related services' includes goods alone or goods and services conjointly. ADP software is defined as 'goods' for this purpose. 'Related services' include architectural, design engineering, project design, project management and related consultancy services provided in conjunction with the supply of goods or construction activities.

(b) 'Procurement' includes purchase, hire, lease, rental and exchange.

(c) 'Australian government body' means:

- (i) the Commonwealth, a State or a Territory; or
- (ii) an authority of the Commonwealth, of a State or of a Territory; or
- (iii) an incorporated company in which an entity covered by sub-paragraphs (a) or

(b) has a controlling interest.

(d) With regard to the participating Australian Parties 'government procurement' means procurement by an Australian government body except where specifically exempted under the Agreement. 'Government procurement' includes procurement of electricity generation and distribution equipment by local government but excludes all other procurement by local government except where State Governments exercise their discretion to determine that the Agreement will have a wider application.

(e) With regard to New Zealand, 'government procurement' means procurement by departments and other bodies including statutory authorities that are controlled by the New Zealand Government and excludes procurement by any local authority, body corporate or other legal entity that has the power to contract.

State Owned Enterprises (SOEs) are not included in the definition of government procurement for New Zealand. However, the New Zealand Government has formally communicated to the SOEs its expectation that they will give all prospective Australian tenderers an equal opportunity along with any New Zealand tenderers to compete with third country suppliers for contracts; that they will be non-discriminatory in their purchasing; and that they will cooperate in any investigation under the GPA of complaints or alleged discrimination in the awarding of contracts.

(f) 'Designated Body' may include an agency or office responsible to the Party, or a position located within such agency or office.

(g) 'State' includes New Zealand, the Northern Territory and the Australian Capital Territory.

(h) 'Australian and New Zealand suppliers' are suppliers of goods or services produced wholly or partly in Australia or New Zealand (i.e. ANZ Supplies) along the lines described in Article 3 (Rules of Origin) of the Australia New Zealand Closer Economic Relations Trade Agreement (*see* Annexe 5).

ANNEXE 1

DISCRIMINATORY OR BIASED PROCUREMENT PRACTICES

Discriminatory or biased procurement practices which deny equal opportunity include but are not limited to the following:

- the drawing of tender specifications, and the issuing of requests for tender, so as to exclude any Australian or New Zealand goods and related services, including raw materials and intermediate products, suitable or reasonably adaptable to the needs concerned;
- the biasing of specifications towards or against particular companies' products;
- the timing of tender opening and closing so as to prevent interested Australian or New Zealand manufacturers developing proposals and submitting compliant tenders;
- specifying quantities and delivery schedules of a scale and frequency which may reasonably be judged as designed to prevent Australian or New Zealand manufacturers meeting requirements;
- dividing required quantities in a way designed to circumvent public tendering and preference requirements;
- purchasing practices designed to avoid public scrutiny; and
- settlement and payment schedules which might reasonably be judged to discriminate against Australian or New Zealand suppliers, particularly smaller suppliers.

ANNEXE 2

EXEMPTIONS FROM THE APPLICATION OF THE GOVERNMENT PROCUREMENT AGREEMENT

Introduction

It is recognised by the Commonwealth and the States that there is a need for exemption from the requirements of the Government Procurement Agreement for certain government bodies, certain classes of procurement (including procurement by government bodies competing in the commercial sector and procurement from government enterprises) and for procurement undertaken in accordance with certain government policies. Exemptions for government enterprises competing in the commercial sector would be in respect of the application of a preference margin, but not other aspects of the Agreement.

Criteria against which the Ministerial Council on Common Services Provision (MCCSP) can consider requests for exemptions and determine whether they are acceptable for the purposes of the Agreement are set out in Appendix 1. A list of exempt agencies is at Appendix 2.

In addition to the exemptions to be approved with effect from the date of implementation of the Agreement, there may be a need to consider additional exemptions, either of an interim or a permanent nature. Some of these may be in accordance with the suggested criteria while others may be for special purposes such as purchasing brought forward to stimulate depressed industries. Future ad-hoc requests for exemptions will require the unanimous agreement of the MCCSP.

Appendix 1

EXEMPT CATEGORIES

Exemptions are available for government bodies meeting the following criteria. These bodies are exempted from the application of a preference margin, but not from other aspects of the Agreement.

1. Bodies which trade in substantial competition with the private sector and which would be placed at a significant commercial disadvantage if they were required to apply preference. Partial exemptions apply where only part of a body's activities are in competition with the private sector.
2. Joint bodies with other governments, not party to the Government Procurement Agreement.
3. Bodies funded primarily from specific special levies on particular industries, or community groups or from special grants or public donations.

The following classes of procurement are exempt from those provisions of the Agreement as specified. The inclusion of particular acts of procurement within these categories will be subject to verification within the monitoring process.

4. Internal procurements of goods and related services by a government from its own Departments or authorities is exempt from all provisions of the Agreement where no other supplier has been asked to tender. If, however, public tenders are called for goods and related services, the provisions of the Agreement apply irrespective of whether a government body submits a tender.
5. The procurement of proprietary items required to ensure machinery or equipment integrity, is exempt from the provisions relating to the selective use of specifications. Where such items are available from a number of sources and public tenders are called, all provisions of the Agreement apply other than those relating to the selective use of specifications.
6. The urgent procurement of goods and related services in the event of emergencies, such as natural disasters, is exempt from all provisions of the Agreement.
7. Procurement of proprietary equipment of a work, health or safety nature specified in Industrial Agreements is exempt from the provisions of the Agreement relating to the selective use of specifications. Where such items are available from a number of sources and public tenders are called, all provisions of the Agreement apply other than those relating to the selective use of specifications.

Appendix 1 cont.

8. Dual or multiple sourcing of goods and related services, where this is based on sound and practical reasons, will not be deemed to be in breach of those provisions of the Agreement which prohibit discrimination on the basis of State of origin.
9. Defence procurement of a strategic nature and other procurement where national security is a consideration will be subject to provisions prohibiting discrimination but will not be subject to monitoring.
10. Purchasing undertaken by Commonwealth and State governments in accordance with particular Commonwealth policies of a non-procurement nature will not be deemed to be in contravention of the provisions of the Agreement.
11. Procurement when a Government considers that it is essential that a local source of a particular good or service should be available to ensure supply in the event of a natural disaster or similar circumstances and that the application of preference is necessary to ensure the continued viability of that local source. Such exemptions shall require the unanimous agreement of MCCSP.

Appendix 2

EXEMPTIONS

The Commonwealth notifies that existing policies under category 10 at the time of implementation of the Agreement are:

- Commonwealth government policy on South Africa; and
- Commonwealth government policy on the Builders Labourers' Federation.

The Victorian Government notifies that existing policies under category 10 are:

- Dealing with South African Sources: Procurement of Goods and Services; and
- Women's Employment Policy.

Tasmania:

Category 1: Tasmanian Government Insurance Office
Tasmanian Government Tourist Bureau
TT Line (Dept of Roads and Transport, Shipping Service)
Tasmanian Government Printer (for commercial work)

New South Wales:

Category 1: State Bank
Government Insurance Office

Category 3: Barley Marketing Board
Banana Marketing Control Committee
Central Coast Citrus Marketing Board
Dried Fruits Board of NSW
Grain Sorghum Marketing Board
Murray Valley Citrus Marketing Board
Oats Marketing Board for the State of NSW
Oilseeds Marketing Board
Rice Marketing Board for the State of NSW
Tobacco Leaf Marketing Board for the State of NSW
Wine Grapes Marketing Board for the Shires of
Leeton, Griffith, Carrathool and Murrumbidgee

Western Australia:

Category 1: Rural and Industries Bank of WA
State Government Insurance Office

Appendix 2 cont.

South Australia:

Category 1: State Bank
State Government Insurance Commission (SGIC)
SA Government Printer (for commercial work)
South Australian Film Corporation
State Clothing Corporation
South Australian Meat Corporation
South Australian Timber Corporation

Category 3: Australian Barley Board

Queensland:

Category 1: Suncorp (State Government Insurance Office)
Queensland Tourist and Travel Corporation
Queensland Industry Development Corporation
Cannery Board (Northgate Cannery)
Bundaberg Public Abattoir
Toowoomba Public Abattoir
Metropolitan Regional Abattoir
Queensland Government Printer (for commercial work)

Category 3: Butter Marketing Board
Barley Marketing Board
Atherton Tablelands Maize Marketing Board
Bulk Sugar Terminals Organisation
Central Queensland Egg Marketing Board
Central Queensland Grain Sorghum Marketing Board
Committee of Direction of Fruit Marketing
Egg Marketing Board (South Queensland)
Navy Bean Marketing Board
Peanut Marketing Board
Queensland Cane Growers' Council
Queensland Milk Board
Rice Marketing Board
State Wheat Board
Sugar Board
Tobacco Leaf Marketing Board
Queensland Pork Producers' State Council
Queensland Commercial Fishermen's Organisation
Bureau of Sugar Experiment Stations

Appendix 2 cont.

Northern Territory:

- Category 1: Territory Insurance Office
Northern Territory Government Printer (for commercial work)
Northern Territory Trade Development Zone Authority
Petroleum products purchased by the Northern Territory Power and Water Authority for the provision of essential electricity services
Timber purchased by the Northern Territory Housing Commission and by the Department of Transport and Works
- Category 3: Northern Territory Tourist Commission

ANNEXE 3

MONITORING PROCEDURES

Principles

- 1(a) Within each State and the Commonwealth Government there will be one clearly identified point of contact for complaints (*see* Appendix 1). That body, to be known as the Designated Body, will be recognised by each Government as having the authority, responsibility and expertise to handle and investigate complaints across all Government/public sector agencies.
- (b) The monitoring system will be based on the examination of alleged breaches following complaints by a Party to the Agreement.
- (c) Each State and the Commonwealth Government will carry out a policy audit in order to ensure consistent application of the Agreement.

Procedures

- 2(a) A complaint should first be raised with the Designated Body in the State in which the complainant is located or directly with the Commonwealth designated body if Commonwealth procurement is involved. A complaint made informally may be processed informally if this is deemed appropriate by the designated body and the complainant. Complaints may:
 - (i) be referred to the National Supply Group (NSG) for registration *only*; or
 - (ii) be referred to the Designated Body in the Party in which the purchasing authority is located.
- (b) The Designated Body in the Party in which the purchasing authority is located will investigate the complaint in accordance with the Agreement and report to the Designated Body in the complainant's State in writing (a copy of the report is to be provided to the Secretary, NSG for information only). The Parties agree to provide specific details of tender prices and all associated documentation to permit full investigation of complaints. Confidentiality of all information will be maintained.
- (c) If the response is satisfactory to the Designated Body in the complainant's State, then the complaint will lapse and NSG will be notified.
- (d) If satisfactory resolution is not achieved, the matter may be referred to NSG for further investigation. If resolution is then achieved, the complaint will lapse.

ANNEXE 3 cont.

- (e) If resolution is not achieved within NSG, NSG may report to the relevant Minister in the State in which the complainant is located and to the State or Commonwealth Minister responsible for the procurement in respect of which the complaint has been lodged. Should resolution not be achieved NSG may report, in writing, to MCCSP Ministers on the whole issue.
- 3. Where a matter or complaint is referred to NSG for investigation and resolution, the NSG Chair will appoint at least two independent representatives of NSG (one of these to be a State representative) to undertake the investigation.

On finalisation of the investigation, the report will be considered by NSG. NSG may then report to MCCSP Ministers in the Parties involved.

- 4. None of the above necessarily implies a warrant to stay the procurement process.
- 5. In cases where complainants are located in more than one State all relevant Designated Bodies and, where necessary, Ministers shall be involved in the procedures.

Appendix 1

GPA CONTACTS FOR DESIGNATED BODIES

VICTORIA

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NSW

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NORTHERN TERRITORY

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ANNEXE 4

MEMORANDUM OF UNDERSTANDING

1. The Parties, in entering into the Government Procurement Agreement, are committed to the pursuit of the following objectives in conjunction with the implementation of the Agreement:
 - (a) Discussions will be entered into with a view to all Parties reaching greater commonality in contractual, technical and performance standards and specifications.
 - (b) The Parties shall work through their various procurement authorities, other relevant bodies and industry to examine specific measures and guidelines designed to achieve greater simplicity and uniformity in procurement policies, practices and procedures. Areas which could be examined include:
 - a unified approach to procurement of goods subject to dumping action or alleged to be dumped;
 - procurement arrangements, including both public and confined tendering;
 - procurement evaluation methodologies and criteria;
 - general conditions of contract;
 - contract administration;
 - wider use of functional specifications;
 - quality assurance;
 - exchange of procurement information;
 - public sector forward procurement plans;
 - cooperation and reciprocal procurement arrangements aimed at creating opportunities for local industry to supply government needs;
 - development of a national supply language; and
 - abolition of monetary preference margins.
 - (c) In pursuit of these functions the NSG will consult with industry bodies.

ANNEXE 4 cont.

2. The Parties accept the following interpretations in relation to the provisions of the Government Procurement Agreement:
 - (a) Nothing in the Agreement precludes the Parties from new developments in purchasing policy, or the use of that policy to implement other policies, provided that in doing so there is no discrimination on the basis of State of origin.
 - (b) Under the provisions of Paragraph 5, MCCSP will consider exemptions in respect of purchasing brought forward to stimulate depressed industries.
 - (c) Requests for interim or permanent exemptions under Paragraph 5 which were not notified in Annexe 2 for approval prior to the implementation of the Agreement may be submitted to MCCSP for approval and incorporation into the Agreement.

ANNEXE 5

ANZ CLOSER ECONOMIC RELATIONS TRADE AGREEMENT—ARTICLE 3, RULES OF ORIGIN

1. Goods exported from the territory of a Member State directly into the territory of the other Member State or which, if not exported directly, were at the time of their export from the territory of a Member State destined for the territory of the other Member State and were subsequently imported into the territory of that Member State, shall be treated as goods originating in the territory of the first Member State if those goods are:

- (a) wholly the unmanufactured raw products of the territory of that Member State;
- (b) wholly manufactured in the territory of that Member State from one or more of the following:
 - (i) unmanufactured raw products;
 - (ii) materials wholly manufactured in the territory of one or both Member States;
 - (iii) materials imported from outside the Area that the other member State has determined for the purposes of this Agreement to be manufactured raw materials; or
- (c) partly manufactured in the territory of that Member State, subject to the following conditions:
 - (i) the process last performed in the manufacture of the goods was performed in the territory of that Member State; and
 - (ii) the expenditure on one or more of the items set out below is not less than one-half of the factory or works cost of such goods in their finished state:
 - A. material that originates in the territory of one or other Member States;
 - B. labour and factory overheads incurred in the territory of one or both Member States;
 - C. inner containers that originate in the territory of one or both Member States.

2. The factory or works cost referred to in paragraph 1(c)(ii) of this Article shall be the sum of costs of materials (excluding customs, excise or other duties), labour, factory overheads, and inner containers.

ANNEXE 5 cont.

3. Where a Member State considers that in relation to particular goods partly manufactured in its territory the application of paragraph 1(c)(ii) of this Article is inappropriate, then that Member State may request in writing consultations with the other Member State to determine a suitable proportion of the factory or works cost different from that provided in paragraph 1(c)(ii) of this Article. The Member States shall consult promptly and may mutually determine for such goods a proportion of the factory or works cost different to that provided in paragraph 1(c)(ii) of this Article.

ANNEXE 6

ADMINISTRATIVE GUIDELINES

1. Application of Preference in Procurement of Passenger Motor vehicles.

Special arrangements apply to the procurement of passenger motor vehicles of the type entered in the Passenger Motor Vehicle Manufacturing Plan.

Plan producers are required to achieve an 85 per cent company average local content for all vehicles included in Plan production. Actual levels of local content of individual models may vary from the company average.

For all purposes of application of purchasing preference, all vehicles entered in the Plan are regarded as having a local content of 85 per cent. Vehicles not entered in the Plan are treated in accordance with their actual level of local content.