
AUSTRALIA AND NEW ZEALAND GOVERNMENT PROCUREMENT AGREEMENT

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Introduction

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 when referred to collectively, or as Party when referred to individually:

- recognise the benefits to Australian and New Zealand (ANZ) industry and to government purchasing bodies of treating Australia and New Zealand as a single market for government procurement in accordance with the objectives and principles of the Australia New Zealand Closer Economic Relations Trade Agreement; and
- are committed to the achievement of the procurement objectives set out in this Agreement.

Accordingly, the Parties have decided to enter into this Agreement, to be known as the Australia and New Zealand Government Procurement Agreement (ANZGPA) which covers all goods and services procured by the Parties.

The Parties are represented by Responsible Ministers.

Objective of the Agreement

The objective of the ANZ Government Procurement Agreement is to create and maintain a single ANZ government procurement market in order to maximise opportunities for competitive ANZ suppliers and reduce costs of doing business for both government and industry.

This will be achieved by:

- ensuring the opportunity exists for ANZ suppliers to compete on an equal and transparent basis for government contracts in the Commonwealth of Australia Government, Australian States and Territories, and New Zealand Government;
- ensuring the absence of inter-state and trans-Tasman application of preference schemes and other forms of discrimination in government procurement, based on the place of origin of goods and services;
- providing a mechanism for co-operation by the Parties in working towards achieving the greatest possible consistency in contractual, technical and performance standards and specifications, and simplicity and consistency in the application of procurement policies, practices and procedures; and
- ensuring that the Parties' application of electronic commerce methods to their procurement is consistent with this Agreement.

Coverage

This Agreement applies to procurement undertaken by Government bodies that is Departments and other relevant public bodies including statutory authorities, which are controlled by the Parties to the Agreement and excludes procurement by any local authority, Government owned corporation, body corporate or other legal entity that has the power to contract, except where the Party exercises its discretion to determine that the Agreement will apply.

The Parties will use their best endeavours to encourage wider application of the Agreement, consistent with good commercial practice, to procurement by all such authorities, bodies and entities.

Exemptions to coverage are listed in Annex 1.

Definitions

1. The following terms are defined for the purposes of the Agreement.
 - (a) **Designated Bodies:** bodies designated in each Party to manage the Agreement and investigate complaints about non-compliance with the Agreement. They may include an agency or office responsible to a Party, or a position located within such agency or office.
 - (b) **Goods and services:** includes goods alone, services alone or goods and services conjointly and includes construction and related services.
 - (c) **Responsible Ministers:** Ministers for each Party with portfolio responsibility for procurement policy where such direct responsibility exists, or Ministers for each Party with portfolio responsibility for the ANZGPA.
 - (d) **Procurement:** the acquisition of goods and services by any contractual means including methods such as purchase, hire, lease, rental, exchange and competitive tendering and contracting (outsourcing) arrangements; and refers to all stages of the procurement process.
 - (e) **Australian and New Zealand suppliers:** suppliers of services or goods produced wholly or partly in Australia or New Zealand (ie ANZ Supplies) along the lines described in Article 3 (Rules of Origin) of the Australia New Zealand Closer Economic Relations Trade Agreement.
 - (f) **Value for money:** is the best available outcome for money spent. Value for money requires a comparative analysis of all relevant costs and benefits of each proposal throughout the whole procurement cycle (whole-of-life-costing).

ANZ Government Procurement Agreement

2. It is agreed that, except as stated otherwise in this Agreement, the Parties will:
 - (a) At all times of the procurement process, conduct their procurement activities in accordance with the spirit and intent of this Agreement,
 - (b) Ensure that government bodies within their jurisdictions comply with this Agreement,
 - (c) Provide to services, goods and suppliers of the other Parties equal opportunity and treatment no less favourable than that accorded to their own domestic services, goods and suppliers (see 4 below),
 - (d) Use Value for money as the primary determinant in all procurement decisions,
 - (e) Achieve maximum practicable simplicity and consistency in the application of procurement policies, practices and procedures, and
 - (f) Debrief unsuccessful ANZ suppliers on request.
3. Within this framework the Parties will seek to maximise competitive opportunities in their procurement for ANZ suppliers while conforming with any commitments of the Parties under domestic and international government procurement agreements.
4. In accordance with Clause 2 (c) of this Agreement, Parties to the Agreement will not use amongst themselves any form of procurement practice which:
 - a) discriminates against;
 - b) is biased against; or
 - c) has the effect of denying equal access or opportunity toany ANZ supplier.

Exemptions

5. It is recognised by the Parties that, under certain circumstances, there may be a need for exemption from some of the requirements of the Agreement for certain classes of procurement. The classes of procurement that are exempt from the Agreement are set out in Annex 1.
6. Parties may seek to have additional classes of procurement exempted from the Agreement. Such exemptions will be permitted only with the unanimous agreement of all Responsible Ministers.

Responsibility

7. Responsibility for this Agreement lies with the Responsible Ministers. It is administered by the Australasian Procurement and Construction Council (APCC) which includes senior officials representing the Parties.
8. Changes to the Agreement are negotiated by the Responsible Ministers.

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 Annex 2 to this Agreement. The Parties will co-operate in this process.
10. The APCC will report, as required, to the Responsible Ministers on any developments or issues in the operation of the Agreement.

Review of the Agreement

11. The Agreement will be reviewed at five-yearly intervals unless otherwise decided unanimously by Responsible Ministers.
12. The Agreement may be amended at any time by unanimous decision of the signatories of the Agreement either at a meeting of, or through correspondence between, Responsible Ministers.

Status of Annexes

13. The Annexes of this Agreement are an integral part of this Agreement.

Annex 1 - Exemptions from the Application of the ANZGPA

The following classes of procurement are exempt from the Agreement:

1. Procurement conducted by Government bodies that trade in substantial competition with the private sector and would be placed at a significant commercial disadvantage if they were required to fully comply with all provisions of the Agreement.
2. Joint ventures with the private sector.
3. Internal procurement of goods and services by a government from its own Departments or public bodies 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/or services, the provisions of the Agreement apply irrespective of whether a government body submits a tender.
4. Where procurement specifications include proprietary items to ensure machinery or equipment integrity the procurement specification is exempt from the provisions of Clause 4 of this Agreement. Where such items are available from a number of sources and/or public tenders are called all aspects of the procurement other than the specification are subject to the provisions of the Agreement.
5. The urgent procurement of goods and services in the event of emergencies, such as natural disasters, periods of national security or UN peacekeeping operations.
6. Procurement of proprietary equipment of a work, health or safety nature specified in Industrial Agreements is exempt from the provisions of Clause 4 of this Agreement only as they may relate to biased specifications. Where such items are available from a number of sources and/or public tenders are called, all provisions of the Agreement apply other than those of Clause 4 of this Agreement only as they may relate to biased specifications.
7. 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.
8. Procurement supporting measures in accordance with Article 18, Exceptions, of the Australia-New Zealand Closer Economic Relations Trade Agreement and measures in relation to the goods or services of persons with a disability, or of philanthropic or not-for-profit institutions.

Annex 2

Monitoring Procedures

1. Principles

- (a) Within each Party there will be one clearly identified point of contact for complaints (see Appendix to Annex 2). That point of contact, to be known as the Designated Body, will be recognised by the Parties as having the authority, responsibility and expertise to handle and investigate complaints across Government/public sector agencies covered by the Agreement
- (b) Notwithstanding clause (a) above, the government body undertaking the procurement to which a complaint relates has initial responsibility for investigating and resolving a complaint.
- (c) The monitoring will be based on the examination of alleged breaches following complaints by a Party to the Agreement.

2. Procedures

- (a) A complaint should first be raised with the government body undertaking the procurement to which the complaint relates, and then, if the complainant is not satisfied with that body's response, the complaint should be raised with the Designated Body in the party 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.
- (b) The Designated Body of the Party responsible for the procurement will investigate the complaint in accordance with the Agreement and report in writing to the Designated Body of the complainant (a copy of the report is to be provided to the Directorate, Australasian Procurement and Construction Council for information only). The Parties agree to provide details and documentation to permit a full investigation of complaints. Confidentiality of all information will be maintained.
- (c) If the response is satisfactory to the Designated Body of the complainant, then the complaint will lapse.
- (d) If satisfactory resolution is not achieved, it is a matter for the complainant to pursue a complaint through other available channels in the jurisdiction concerned.

Appendix to Annex 2

Contacts for Designated Bodies

COMMONWEALTH

Assistant Secretary

Procurement Policy Branch
Department of Finance
John Gorton Building
King Edward Terrace
PARKES ACT 2600
Tel: 02 6215 2970
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NEW ZEALAND

Manager Procurement Policy and Development

Government Procurement Solutions
Ministry of Business, Innovation and Employment
PO Box 1473
WELLINGTON
NEW ZEALAND
Tel: 64 4 474 2181
Fax: 64 4 978 3107
Email: procurement@med.govt.nz

NEW SOUTH WALES

Secretariat

NSW Procurement Board

McKell Building
2-24 Rawson Place
SYDNEY NSW 2000
Tel: 1800 679 289
Fax: 02 9372 8687
Email: nswbuy@services.nsw.gov.au

WESTERN AUSTRALIA

Chief Executive Officer

State Supply Commission
Locked Bag 11,
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PERTH WA 6850.
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SOUTH AUSTRALIA

Director

Procurement Policy and Governance
Government Accounting, Reporting and Procurement
Department of Treasury and Finance
GPO Box 1045
ADELAIDE SA 5001
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VICTORIA

Director

Strategic Sourcing, Market Engagement and Corporate
Department of Treasury and Finance
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TASMANIA

Director

Procurement and Property Branch
Department of Treasury & Finance
GPO Box 147
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Fax: 03 6233 3681
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QUEENSLAND

Assistant Director-General

Procurement Transformation Division
Department of Housing and Public Works
GPO Box 123
Brisbane Qld 4001
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Fax: 07 3224 7921
Email: betterprocurement@hpw.qld.gov.au

NORTHERN TERRITORY

The Director

Procurement Policy Unit
Department of Business
GPO Box 3200
DARWIN NT 0801
Tel: 08 8999 1711
Fax: 08 8924 3820
Email: ProcurementPolicy@nt.gov.au

AUSTRALIAN CAPITAL TERRITORY

Executive Director Shared Services Procurement

Commerce and Works Directorate
PO Box 818
DICKSON ACT 2602
Tel: 02 6207 8944
Fax: 02 6205 3909
Email: SharedServicesProcurementPolicy@act.gov.au