



Finance,
Services &
Innovation

International Procurement Agreements

Guidelines for NSW Government Agencies

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1. Introduction

1.1 Purpose of this guide

NSW Government agencies are required to comply with the government procurement provisions of applicable international procurement agreements. This guide provides information about how these agreements apply and what agencies need to do to comply with those requirements.

1.2 What international procurement agreements apply to NSW agencies?

1.2.1 Free trade agreements

Australia has entered into six free trade agreements that include government procurement provisions applying to NSW Government agencies:

- Australia – United States Free Trade Agreement (2005)
- Australia – Chile Free Trade Agreement (2009)
- Korea – Australia Free Trade Agreement (2014)
- Japan – Australia Economic Partnership Agreement (2015)
- Trans Pacific Partnership Agreement (2016)
- Singapore – Australia Free Trade Agreement (as amended in 2017).

The Trans Pacific Partnership (TPP) Agreement is a multi-lateral agreement between Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. Options for commencement are currently under consideration by the members. The United States signed the agreement, but subsequently announced that it is withdrawing and will not commence the agreement.

The Singapore – Australia Free Trade Agreement (SAFTA) commenced operation in 2003. In October 2016, Singapore and Australia signed the Agreement to Amend SAFTA. These amendments include government procurement provisions which will apply to NSW Government agencies from 1 December 2017.

As of October 2017, Australia was negotiating free trade agreements which include government procurement provisions with Hong Kong, Peru and with the Gulf Co-operation Council (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates).

The information provided in this guide does not replace the detailed requirements of the actual agreements. The full text of the free trade agreements discussed in this guide can be found at:

<http://dfat.gov.au/trade/agreements/pages/trade-agreements.aspx>

1.2.2 World Trade Organisation Government Procurement Agreement

The World Trade Organisation Government Procurement Agreement (WTO GPA) is an agreement between 19 parties comprising of 47 World Trade Organisation members (counting the European Union and its 28 member states as one party).

Australia applied to become a party to the WTO GPA in September 2015, and submitted a revised offer in June 2017. If the Australian application is successful, the WTO GPA will apply to NSW Government agencies identified in that offer from a date which is still to be agreed.

1.3 Which NSW Government agencies have international procurement obligations?

Each international procurement agreement includes a Schedule which lists the NSW Government agencies that are subject to that agreement. [Appendix 1](#) lists agencies and the international procurement agreements that apply to the agency.

1.4 Do NSW Government agencies need to comply with multiple agreements?

Agencies will need to comply with free trade agreements applying to their agency and to the WTO GPA and the TPP Agreement if they commence. Governments and suppliers from other nations will have the opportunity to lodge complaints or request remedial actions under the applicable agreement. For example, a supplier from Japan may be able to choose to lodge a complaint under the Japan – Australia Economic Partnership Agreement or (on commencement) the WTO GPA or the TPP Agreement.

The IPA guide explains NSW Government agency obligations under existing free trade agreements. If the WTO GPA and the TPP Agreement commence operation in Australia, NSW Government agencies may have additional procurement compliance obligations which are not included in the IPA guide.

1.5 Australia and New Zealand Government Procurement Agreement

The Australia and New Zealand Government Procurement Agreement (ANZGPA) is a cooperative arrangement between the Australian Government, the New Zealand Government and all state and territory governments. It is not a free trade agreement, therefore, the various rules and procedures for procurement that apply to free trade agreements do not necessarily apply to the ANZGPA.

The ANZGPA applies to all NSW Government Agencies and public bodies including statutory authorities. The ANZGPA does not apply to Government owned corporations, bodies corporate or other legal entities that have the power to contract.

New Zealand is a party to the WTO GPA and the TPP Agreement. Obligations discussed in this guide will apply to suppliers from New Zealand if either of those agreements commence operation in Australia.

2. Identify affected procurement actions

NSW Government agencies with international procurement obligations must identify all procurement actions that are covered by an [international procurement] agreement (referred to as a covered procurement). A procurement is a covered procurement and the IPA guide applies if the procurement:

- is undertaken by or on behalf of an agency listed in [Appendix 1](#)
- is implemented through any form of contract (see [Section 2.1](#))
- has an estimated dollar value equal to, or in excess of, specified thresholds at the time of publication of a Notice of Intended Procurement (see [Sections 2.2, 2.3](#) and [Appendix 1](#))
- is not an excluded category of procurement (see [Section 2.4](#))

Agencies must ensure that any Notice of Intended Procurement and tender documents, specify the international agreements that apply to the procurement. (See [Sections 4.2](#) and [4.3](#)).

Agencies must also ensure that the procurement action complies with the requirements of international procurement agreements including those explained in this guide.

2.1 Procurement contracts

All common forms of procurement contract are covered by the international procurement agreements. This includes contracts for:

- the purchase of goods
- the purchase of services including construction services
- the purchase of any combination of goods and services
- rental or lease agreements (but not agreements for the acquisition or lease of land, existing buildings or other immovable property)
- the construction or rehabilitation of physical infrastructure or other works where the supplier is assigned ownership or control for a specified period of time and can charge for the use of the works during the period of the contract.

2.2 Value of the procurement

The value of the intended procurement will determine whether it is covered by an international procurement agreement. Therefore, agencies must establish the value of each intended procurement.

If the value of the procurement is unknown, the agency must deem the procurement to be covered by all international procurement agreements applicable to the agency. The value of the intended procurement is as estimated at the time of the publication of a Notice of Intended Procurement.

When valuing a procurement, agencies must estimate the maximum total value of the procurement over its entire duration, including costs arising from:

- all forms of remuneration, including any premium, fee, commission, interest or other revenue stream that may be provided for under the contract
- the value of any option clause
- any contract awarded at the same time or over a given period to one or more suppliers under the same procurement.

Specific requirements apply when valuing procurements implemented by a lease, rental or hire purchase agreement and to procurements where a total price is not specified.

An agency must either deem the procurement to be covered by all the international procurement agreements applying to the agency or assess the value as:

- the estimated monthly instalment multiplied by 48, for any contract which is for an indefinite period or where the period of the contract is uncertain
- the total estimated maximum value of the contract, for a contract with a duration of 12 months or less
- the total estimated value of the contract including any estimated residual value, for a contract with a duration of more than 12 months.

Agencies must not prepare or design a procurement, structure or divide a procurement into separate procurements or use a particular valuation methodology to avoid their obligations.

2.3 Identifying thresholds

Each international procurement agreement sets specific threshold values for covered procurements. Procurement actions over these values are covered procurements.

Thresholds are declared by the Commonwealth Minister for Finance and are set for a two-year period. The threshold values are calculated using the daily value of the Australian dollar over the previous two-year period compared against a basket of international currencies.

Threshold values for each free trade agreement are listed in [Appendix 1](#).

Agencies should ensure that they are referring to the current version of [Appendix 1](#) for the correct thresholds.

2.4 Excluded procurements

Some categories of procurement are exempted from the international procurement agreements. [Appendix 2](#) sets out the exemptions for each agreement.

Key categories of procurement that are exempt include health and welfare services, education services and motor vehicles.

The agreements do not apply to non-contractual agreements and assistance provided by government agencies, such as cooperative agreements, grants, loans, equity infusions, guarantees, subsidies, fiscal incentives and sponsorship arrangements.

All of the agreements exempt:

- any form of preference to benefit small and medium enterprises
- measures to protect national treasures of artistic, historic, or archaeological value
- measures for the health and welfare of indigenous people
- measures for the economic and social advancement of indigenous people

All of the agreements also exempt the following, subject to the measure not being applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail, or a disguised restriction on international trade:

- the protection of public morals, order or safety
- the protection of human, animal or plant life or health
- the protection of intellectual property and
- relating to the goods or services of handicapped persons, of philanthropic or not for profit institutions, or of prison labour.

2.5 Facilitation of participation by SMEs

If a Party maintains a measure that provides preferential treatment for SMEs, the Party shall ensure that the measure, including the criteria for eligibility, is transparent.

To facilitate participation by SMEs in covered procurement, each Party shall, to the extent possible and if appropriate:

- provide comprehensive procurement-related information that includes a definition of SMEs in a single electronic portal;
- endeavour to make all tender documentation available free of charge;
- conduct procurement by electronic means or through other new information and communication technologies; and
- consider the size, design and structure of the procurement, including the use of subcontracting by SMEs.

3. General Principles

3.1 General principles

Government agencies must ensure that all covered procurement treats goods, services and suppliers from other participating nations no less favourably than domestic goods, services and suppliers.

In addition, agencies must not treat a locally established supplier less favourably than another locally established supplier on the basis of degree of foreign affiliation or ownership

3.2 Offsets are prohibited

Agencies must not seek, take account of, impose or enforce any offset at any stage of a procurement action.

An offset is any condition or undertaking that requires the use of domestic content, a domestic supplier, the licensing of technology, technology transfer, investment, counter-trade or similar actions to encourage local development in Australia or to improve Australia's balance of payments accounts.

3.3 Conditions for participating

Agencies can set conditions that a supplier must meet to participate in a covered procurement. These conditions are separate to criteria set to evaluate competing proposals from qualified suppliers.

These participation conditions must be specified in advance of any Notice of procurement and are limited to a supplier's:

- legal capacity
- financial capacity
- commercial and technical ability

Agencies must not impose any participation condition that a supplier:

- have prior work experience in Australia
- have previously been awarded one or more contract with a government agency in Australia.

Agencies may exclude, if there is supporting material, a supplier on grounds such as:

- bankruptcy or insolvency
- failure to pay taxes
- professional conduct and similar
- false declarations; or

- significant deficiencies in performance of any substantive requirement or obligation under a prior contract.

A supplier's capacity and ability must be assessed on the basis of the supplier's business activities both inside and outside of Australia. Agencies may require relevant prior experience where this is essential to meet the requirements of the procurement.

Agencies must assess whether a supplier meets the conditions for participation and, only if they do so, will their submission/tender be considered further.

4. Procurement planning

4.1 Annual Procurement Plan

Agencies should publish an Annual Procurement Plan for all covered procurements at the start of each financial year, following release of the NSW Government budget.

This plan should provide:

- information about future planned procurements including the subject matter of the procurement and the planned date for publishing a Notice of Intended Procurement
- information about major or strategic initiatives which may generate procurements over the next three years
- telephone and email contact points for enquiries related to the procurement undertaken by the agency.

The Annual Procurement Plan replaces the current procurement plans published by agencies and must be published on NSW eTendering.

The Annual Procurement Plan is for planning purposes and does not represent an invitation for bids. It is not a commitment by the agency to purchase the described goods, services or works.

The minimum time period for a covered procurement may be reduced in some circumstances if an agency has provided information about a planned procurement in their Annual Procurement Plan. [Appendix 4](#) provides information about minimum time periods for tenders.

4.2 Publish a Notice of Intended Procurement

Agencies must publish a Notice of Intended Procurement free of charge on NSW eTendering for every covered procurement affected by an international procurement agreement, unless the covered procurement is:

- undertaken using a Multi-Use List of Suppliers (see [Section 4.6](#) and [Section 10.6](#))
- meets the specific requirements for a Limited Procurement (see [Section 5.5](#)).

Agencies must publish the Notice of Intended Procurement in advance and keep it accessible to the public until the deadline for supplier responses. The Notice should provide interested suppliers with time to prepare and submit a request for participation (if applicable) and prepare a responsive tender. The Notice can be included with a Request for Tender if the information in the Notice is accessible to the public and made available free of charge.

4.3 Information in a Notice of Intended Procurement

The Notice of Intended Procurement must include:

- the name and address of the agency and other information necessary to contact the agency and obtain all relevant documents related to the covered procurement
- a list of the free trade agreements that apply to the covered procurement
- a description of the covered procurement, including the nature and quantity of the goods or services to be procured and a description of any options, or the estimated quantity if the quantity is not known
- the procurement method to be used
- the time-frame for delivery of goods or services or the duration of the contract
- the address and the final date for submission of tenders
- a list and a brief description of any conditions for participation of suppliers, including any related documents or certifications that must be provided
- the intention to conduct negotiations with tenderers during the covered procurement, if applicable.

When determining the date for submitting a Request to Participate or a Request for Tender, agencies must take account of:

- the reasonable needs of the agency
- the nature and complexity of the procurement
- the time needed to submit non-electronic tenders from domestic and overseas locations if electronic means are not used
- minimum time periods specified in [Appendix 4](#).

4.4 Notice of Intended Procurement for a Selective Tender

If a Selective Tender is going to be used, the Notice of Intended Procurement must also specify the number of tenderers that will be invited to participate and the criteria that will be used to select those tenderers.

Agencies can choose to defer providing information about the timeframe for delivering goods or services or the duration of the contract until inviting the selected tenderers to submit a tender.

4.5 Notice of Intended Procurement for a Panel Arrangement (Framework Agreement)

Agencies can procure goods and services from a panel of approved suppliers through a Panel Arrangement also known as a Framework Agreement. The panel must be established through an open tender process.

Agencies can publish a Notice of Intended Procurement for a Panel Arrangement which applies to all covered procurements under that Agreement. The Notice must include all the information listed in [Section 4.3](#) and also include:

- the terms and conditions of the Panel Arrangement
- the method that will be used to award contracts to suppliers on the panel
- the period of time that the panel will be used
- whether the panel will be open to new suppliers during that period
- the circumstances where a supplier can be removed from the panel.

The Notice can be published as a one-off Notice to establish the panel, or republished when a panel is refreshed or expanded. A Notice for a panel which is continuously open to new suppliers must state that is an open panel, and must be available on the government tender's website for the whole period that the panel continues to be used.

4.6 Notice of a Multi-Use List

Agencies can establish a Multi-Use List of suppliers that they intend to use more than once. [Section 10.6](#) provides information about the use of Multi-Use Lists.

To establish a Multi-Use List, agencies must publish a Notice of Multi-Use List. This Notice can also be used as a Notice of Intended Procurement for procurements covered by the Multi-Use List.

A Notice of a Multi-Use List must be published on NSW eTendering at least annually inviting suppliers to apply to be included. A Notice can be published continually, inviting suppliers to apply at any time. A Notice of a Multi-Use List must include:

- a description of the goods and services for which the list may be used
- the conditions for participation that suppliers must satisfy for inclusion on the list
- the name and address of the agency
- the methods that the agency will use to verify that a supplier satisfies those participation conditions
- the period that the list will be used
- indication of the method by which notice will be given of the termination of use of the list
- the International Procurement Agreements that the list will be used for
- the deadline for applying to be included in the list, if applicable
- a statement that only suppliers on the list will receive further Notices of Intended Procurement covered by the list, if applicable.

4.7 No Notice is required for a limited tender

Agencies can undertake a Limited Tender in specific circumstances. [Section 5.5](#) provides information on Limited Tenders.

Agencies do not need to publish a Notice of Intended Procurement for a Limited Tender.

5. Procurement method

5.1 What procurement methods can an agency use

Under international procurement arrangements agencies may procure via one of the following methods:

- open tenders
- panels established through an open tender or selection process
- selective tenders in accordance with the rules described in [Section 5.4](#); and
- limited tenders in accordance with the rules described in [Section 5.5](#).

5.2 Open tendering is default

Agencies must use an open tender for all covered procurements unless [Section 5.4](#) or [Section 5.5](#) applies. An open tender can include establishing a panel used for secondary procurement, as discussed in [Section 5.3](#).

5.3 Panels established through an open selection process

A Panel is a list of suppliers who have been pre-approved by an agency and who have agreed to the terms and conditions for supply.

A panel may be appropriate where an agency wants to:

- verify which suppliers are capable of delivering specific goods, services or works, and
- agree in advance with each supplier the terms and conditions of supply of the goods, services or works, including the pricing (eg agreed hourly fee) or the pricing mechanism that will apply and conditions for supply.

Agencies may purchase directly from the panel and do not need to openly advertise individual contract opportunities. This is called secondary procurement.

Agencies must publish a Notice of Intended Procurement including the information specified in [Section 4.5](#) and openly advertise the opportunity to be selected for the panel.

The Notice of Intended Procurement used to establish the Panel must outline the method/s that the agency will use to select suppliers when a contract opportunity arises (secondary procurement process). The method/s should be appropriate for the nature of the goods, services or works and the anticipated volume of work.

5.4 Selective tenders

A selective tender is a procurement method where agencies invite qualified suppliers to submit a tender. Examples of selective tenders are:

- issuing a request for Expressions of Interest or a Request to Participate and inviting proposals from qualified suppliers that respond
- issuing a request for Proposals to suppliers on a multi-use list (pre-qualified suppliers), or
- approaching a list of suppliers that have a specific licence (or other legal requirement) that is essential to the conduct of the procurement.

To ensure optimum effective competition under selective tendering procedures, agencies are to invite tenders from the largest number of domestic suppliers and suppliers from countries that participate in international government procurement agreements with Australia that is consistent with the efficient operation of the procurement system; and the time limits described in [Appendix 4](#) of these guidelines apply.

5.4.1 Selective tendering from a Notice inviting applications for participation, or from an EOI.

An agency may use the list of suppliers that lodge a compliant response to a Notice inviting applications for participation, or to an EOI, as the basis for inviting potential suppliers to submit tenders.

The agency's invitation to submit tenders must be sent to all suppliers that lodged a compliant response unless the Notice inviting applications for participation or the EOI expressly stated that limited suppliers would be invited to bid. The tender documentation is to be made available at the same time to all of the qualified suppliers.

Provided that relevant requirements and evaluation criteria have been specified in the Notice inviting applications for participation, or the EOI, or the associated request documentation, an agency may:

- in assessing technical ability, assess the extent to which a submission meets the technical and performance specification of the procurement; and
- limit the number of suppliers that it invites to tender, based on its rating of submissions.

In all other cases, the agency must invite all suppliers that have responded to the request for expressions of interest and that meet the conditions for participation to submit a tender.

5.4.2 Selecting on the basis of a licence or specific legal requirement

Agencies may conduct a selective tender for a list of all potential suppliers that have been granted a licence, or that have been determined to comply with specific legal requirements that exist independently of the procurement process, provided that:

- the requirement for a licence or compliance with specific legal requirements is essential to the conduct of the procurement; and
- the complete list of such potential suppliers is maintained by the appropriate agency.

Otherwise, the agency must invite all suppliers on the list to submit tenders. The tender documentation is to be made available at the same time to all of the qualified suppliers.

5.4.3 Information on decisions relating to a participation in a covered procurement

Where a supplier applies for participation in a covered procurement, the agency must promptly advise the supplier of its decision with respect to its application.

Where an agency:

- rejects an application for participation in a covered procurement
- rejects a request for inclusion on a multi-use list or
- ceases to recognise a supplier as having satisfied the conditions of participation [or removes a supplier from a Multi-Use List],

the agency must promptly inform the supplier and provide, on request by the supplier, a written explanation of its decision.

5.5 Limited tendering and when you can use it

An agency may contact a supplier or suppliers of its choice provided that it is not avoiding competition, protecting domestic suppliers or discriminating against domestic or international suppliers.

Limited tendering can be used by an agency **only** in the following circumstances:

- where, in response to a prior Notice, invitation to participate, or invitation to tender:
 - no tenders were submitted or no suppliers requested participation
 - no tenders were submitted that conform to the essential requirements in the tender documentation,
 - no suppliers satisfied the conditions for participation, or
 - the tenders submitted were collusive, providing that the procuring entity does not substantially modify the essential requirements set out in the Notices or tender documentation
- where the goods or services can only be supplied by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:

- the requirement is for a work of art;
- the protection of patents, copyrights, or other exclusive rights, proprietary information; or
- due to an absence of competition for technical reasons;
- for additional deliveries by the original supplier or its authorised agents, of goods or services that were not included in the initial procurement if a change of supplier for such additional goods or services:
 - (i) cannot be made for technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement, or due to conditions under original supplier warranties; and
 - (ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;
- for goods purchased on a commodity market
- where an agency procures a prototype or a first good or service 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. Original development of a prototype or a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the prototype or the first good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs. Subsequent procurements of these newly developed goods or services, however, shall be subject to these Guidelines
- if additional construction services that were not included in the initial contract but that were within the objectives of the original tender documentation have, due to unforeseeable circumstances, become necessary to complete the construction services described therein. However, the total value of contracts awarded for additional construction services may not exceed 50 per cent of the value of the initial contract
- 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; or
- 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 these guidelines; and
 - the contest is judged by an independent jury with a view to a design contract being awarded to the winner.

- for reasons of extreme urgency brought about by events unforeseen by the agency, the goods or services could not be obtained in time under tendering procedures consistent with international procurement agreements.

For each contract awarded under a limited tender process an agency shall prepare a written report, or maintain a record that includes:

- the name of the agency
- the value and kind of goods or services procured and
- a statement indicating the circumstances and conditions that justify the use of a procedure other than open or selective tendering procedures.

6. Selection criteria

6.1 Technical specifications

An agency must not use technical specifications, or prescribe any conformity assessment procedures with the purpose or the effect of creating unnecessary obstacles to trade.

In prescribing technical specifications for goods and services being procured, an agency must, where appropriate:

- specify the technical specifications, in terms of performance and functional requirements, rather than design or descriptive characteristics; and
- base the technical specifications on international standards, where such standards exist otherwise on national technical regulations, recognised national standards or building codes.
- **(For the United States and Chile Free Trade Agreements only)** except where the use of an international standard would fail to meet the procuring entity's program requirements or would impose greater burdens than the use of a recognized national standard.

A specification must not require or refer to a particular trademark or trade name, patent, copyright, design or type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement arrangements. Where such reference is necessary, words such as "or equivalent" must be included in the specification.

An agency must not seek or accept advice in the preparation or adoption of any technical specifications for a procurement from a person that may have a commercial interest in the procurement, if seeking or accepting that advice would have the effect of precluding competition.

An agency may:

- conduct market research in developing technical specifications for a specific covered procurement; or
- allow a supplier that has been engaged to provide design or consulting services to participate in procurements related to such services, provided it would not give the supplier an unfair advantage over other suppliers.

An agency may prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment.

This section is not intended to preclude an agency from preparing, adopting or applying technical specifications required to protect sensitive government information, including specifications that may affect or limit the storage, hosting or processing of such information outside New South Wales.

6.2 Exclusion criteria

An agency may declare ineligible for participation in the agency's procurements, either indefinitely or for a stated period of time, suppliers that the NSW Government has determined to have engaged in fraudulent or other illegal actions in relation to government procurement in NSW.

7. Procurement process

7.1 Tender information

An agency must promptly provide, on request to any interested supplier, tender documentation that allows suppliers to prepare and submit a responsive tender. Agencies must also reply to any reasonable request for relevant information by an interested or participating supplier, provided that the information does not give that supplier any advantage.

Unless already provided in the Notice of Intended Procurement, that tender documentation shall include a complete description of:

- the procurement:
 - including the nature and scope
 - if known, the quantity of the good or service to be procured or if the quantity is not known, the estimated quantity
 - any requirements to be fulfilled, including any technical specifications, conformity certification, plans, drawings or instructional materials
- any conditions for participation, including any financial guarantees, information and documents that suppliers are required to submit
- all criteria to be considered in the awarding of the contract and the relative importance of those criteria including any evaluation criteria weighting
- if there will be a public opening of tenders, the date, time and place for the opening
- any other terms or conditions relevant to the evaluation of tenders; and
- any date for delivery of a good or supply of a service (agencies shall take into account factors such as the complexity of the procurement before establishing such date).

7.2 Register of suppliers

Agencies can establish a supplier registration system. The system can have multiple registers which apply to all procurement or to one or more categories of procurement. Suppliers can be required to register and to provide information such as:

- supplier identity and contacts
- financial reports and information
- current status of incorporated bodies
- statutory enforcement actions taken against the supplier
- findings of courts or tribunals about the supplier

- qualifications that suppliers must have to be eligible to participate in a particular category of procurement – such as certifications of technical or commercial capability.

Agencies must design registration systems so that it is consistent with the general principle of treating suppliers from participating nations no less favourably than domestic suppliers. Agencies must also, as far as practical, minimise differences in registrations systems between agencies and other relevant government registration systems in Australia.

Agencies cannot adopt or apply any registration system or a qualification procedure which creates unnecessary obstacles to suppliers from a participating nation. [Section 5](#) provides further information about how to qualify suppliers to participate in a procurement.

Agencies must also ensure that they do not use a registration system or a qualification procedure to delay or prevent a supplier from:

- being included in a list of qualified suppliers
- being considered for a particular procurement.

Information in a register of suppliers can be used to identify suppliers that are qualified to participate in a procurement. Agencies must, however, ensure that they comply with other relevant requirements for the procurement method being used, and must ensure that suppliers have appropriate opportunities to register and provide any required information. The tender documentation is to be made available at the same time to all of the qualified suppliers.

7.3 Evaluation criteria

An evaluation plan should be developed to detail the procedure and methodology that will be used to determine best value for money responses to the covered procurement.

Value for money is achieved through an overall maximisation of all of the evaluation criteria by a tenderer. The evaluation will be undertaken in a manner that is accountable, transparent and fair.

7.4 Conditions for participating

Agencies may specify conditions for participation that potential suppliers must be able to demonstrate compliance with in order to participate in a procurement. Conditions for participation must be limited to those that will ensure that a potential supplier has the legal, commercial, technical and financial abilities to fulfil the requirements of the procurement.

7.5 Minimum process requirements (opening tenders, close date, all required info)

An agency shall, consistent with its own reasonable needs, provide sufficient time for a supplier to obtain the tender documentation and to prepare and submit a request for participation and a responsive tender, taking into account factors such as:

- the nature and complexity of the procurement; and
- the time necessary for transmitting tenders by non-electronic means from foreign as well as domestic points if electronic means are not used.

An agency shall require all interested or participating suppliers to submit requests for participation or tenders in accordance with a common deadline. These time periods, and any extension of these time periods, shall be the same for all interested or participating suppliers. For further information on deadlines, see [Appendix 4](#).

An agency shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process and the confidentiality of tenders.

If an agency provides a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the agency shall provide the same opportunity to all participating suppliers.

7.6 Cancelling or not proceeding with a procurement

An agency shall not use options, cancel a covered procurement, or modify or terminate awarded contracts in order to avoid the obligations under international procurement agreements.

7.7 Changes to tender documentation

If prior to the award of a contract, an agency modifies, reissues or amends any criteria or technical requirements, in either the Notice of Intended Procurement or tender documentation, it shall publish or provide all updated information:

- to all the suppliers that are participating at the time the information is amended, if known, and in all other cases, in the same manner as the original information was made available; and
- in adequate time to allow participating suppliers to modify and resubmit their initial tenders, as appropriate.

7.8 Negotiations and participant communication in a procurement process

An agency may conduct negotiations in the context of covered procurement if:

- the agency has indicated its intent to conduct negotiations in the Notice of Intended Procurement; or
- it appears from the evaluation that no tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the Notice of Intended Procurement or tender documentation.

An agency shall:

- ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the Notice of Intended Procurement or tender documentation; and
- when negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

7.9 Records

An agency shall maintain the documentation, records and reports relating to tendering procedures and contract awards for covered procurement, including the records and reports required if using a limited tender process, for at least three years after the award of a contract. The NSW Government's requirement is for seven years after the expiration of the contract.

8. Awarding contracts and post award information

8.1 Awarding of contracts

An agency may only consider for award tenders that conform to the essential requirements of all tender documentation or Notices issued during the course of a covered procurement.

Unless an agency determines that it is not in the public interest to award a contract, it shall award a contract to the supplier that the agency has determined satisfies the conditions for participation and is fully capable of undertaking the contract and whose tender is determined to be the lowest price, the best value, or the most advantageous, in accordance with essential requirements and evaluation criteria specified in the Notices and tender documentation.

An agency may not cancel a covered procurement, nor terminate or modify awarded contracts so as to avoid the obligations of international procurement agreements.

8.2 Notifying unsuccessful suppliers

An agency must promptly inform suppliers that have submitted tenders of the contract award decision.

An agency, on request, shall provide an unsuccessful supplier with the reasons their tender was not successful.

8.3 Publishing award information

An agency must publish promptly but no later than 60 days after awarding a contract a Notice that includes, at least, the following information:

- the name and address of the procuring agency
- a description of the goods or services procured
- the date of award or the contract date
- the contract value
- the name and address of the successful supplier or respondent and
- the procurement method used.

9. Complaints and review

9.1 Information about compliance

Agencies have obligations to provide access to information under the *Government Information (Public Access) Act 2009*. In addition to these obligations, agencies must cooperate with requests to provide information made under international procurement agreements.

The specific obligations to provide information vary across the different agreements. NSW Procurement can provide advice if any request is made directly to an agency to provide information under an international procurement agreement.

Agencies should ensure that they can promptly provide any information necessary to determine whether a covered procurement was conducted fairly, impartially and in accordance with their obligations, including information on the characteristics and relative advantages of the successful tender.

The Commonwealth Government has an obligation to provide this information to the government of any participating nation on request. The government receiving that information must consult the Commonwealth Government before disclosing the information to any supplier.

Agencies do not need to provide information that:

- would impede law enforcement
- might prejudice fair competition between suppliers
- would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property
- would otherwise be contrary to the public interest.

9.2 Responding to supplier complaints

A supplier can make a complaint that an agency has not complied with their obligations under an international procurement agreement. The supplier can be an Australian supplier or a supplier from another nation participating in an international procurement agreement.

The provisions for complaints vary across the different international procurement agreements. All the agreements:

- require agencies to consider complaints impartially and in a timely manner
- give suppliers a right to have their complaint reviewed by an impartial external body if it is not resolved.

Agencies should ensure that any complaint received is managed in accordance with the NSW Procurement Board *Complaint Management Guidelines* which will be updated to take account of this guide on International Procurement Agreements.

The NSW Government is considering options for establishing an independent judicial or administrative review body with the power to consider complaints and to make orders. This may include orders to pay compensation and orders to halt or suspend a procurement action.

10. Published information

10.1 Policy and process

NSW procurement laws, regulations, procedures and policy guidelines relating to covered procurements and any changes or additions to this information will be published on ProcurePoint.

10.2 Procurement plans

Agencies should publish, as early as possible in each financial year, an annual procurement plan for that year.

At a minimum, the annual procurement plan should include a description of each planned procurement and the planned date of the publication of the Notice of procurement or commencement of the related tender procedure.

10.3 Notices of intended procurement

In an open tendering procedure, an agency shall publish a Notice inviting interested suppliers to submit tenders (hereinafter referred to as "Notice of procurement") in electronic media that remains readily accessible to the public for the entire period established for tendering.

In a selective tendering procedure, if an agency publishes a Notice inviting applications for participation or requesting suppliers to express their interest in a covered procurement, that Notice shall be published in electronic media that are readily accessible to any interested supplier.

In relation to multi-use lists a Notice inviting suppliers to apply for inclusion on a multi-use list may be used as a Notice of Intended Procurement, provided a statement is included that only suppliers on the multi-use list will receive further Notices of procurement covered by the multi-use list

10.4 Government tender's publication

NSW eTendering is the online tendering system to be used by NSW Government agencies to publicly make available information about tendering opportunities, the receipt of tender responses as well as contract disclosure etc.

Where considered appropriate NSW Government agencies may use an agency specific website for the advertisement of tenders and strategic procurement platforms for inviting and evaluating suppliers.

Agency specific websites shall

- ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and

- establish and maintain mechanisms that ensure the integrity of information provided by suppliers, including requests for participation and tenders.

10.5 Registration procedures for list of qualified suppliers

Where an agency requires suppliers to register or pre-qualify before being permitted to participate in a covered procurement, that agency shall ensure that a Notice inviting suppliers to apply for registration or pre-qualification is published in adequate time to enable interested suppliers to initiate and, to the extent that it is compatible with the efficient operation of the procurement process, complete the registration or qualification procedures.

10.6 Rules for multi-use lists

An agency may establish a multi-use list provided that the agency annually publishes or otherwise makes available continuously on a government tenders website a Notice inviting interested suppliers to apply for inclusion on the list.

The Notice shall include:

- a description of the goods and services, or categories thereof, for which the list may be used;
- the conditions for participation to be satisfied by suppliers and the methods that the agency will use to verify a supplier's satisfaction of the conditions;
- the name and address of the agency and other information necessary to contact the agency and obtain all relevant documents relating to the list; and
- any deadlines for submission of applications for inclusion on that list.

An agency that maintains a multi-use list shall include on the list all suppliers that satisfy the conditions for participation within a reasonably short time.

10.7 Post award information and statistics

Not later than 60 days after the award of a contract for a covered procurement, an agency shall publish a Notice on NSW eTendering.

11. Definitions

The following terms are defined for the purposes of these guidelines:

commercial goods or services means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes

conditions of participation means registration, qualification, and other prerequisites for participation in a covered procurement

contracts for labour hire means a contract under which an agency engages an individual to provide labour, when the individual is engaged either directly or through a firm which primarily exists to provide the services of only that individual. This includes the appointment of an eminent individual to a special role, or the appointment of a person or persons to a governance committee (for example, an audit committee, ethics committee or steering committee), but does not include the engagement of consultants.

covered procurement has the meaning in [Section 2](#).

enterprise means any entity constituted or organised under applicable law, whether or not for profit, and whether privately or government owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association or similar organisation

framework agreement is also known as a panel arrangement

in writing or written means any worded or numbered expression that can be read, reproduced and may be later communicated. It may include electronically transmitted and stored information

international standard means a standard that has been developed in conformity with the document referenced in Article 7.5 of the Chile Australia Free Trade Agreement

limited tendering refers to the situation where tender documents are issued to a supplier or suppliers of choice in relation to a covered procurement

measure includes any law, regulation, procedure, requirement or practice

multi-use list means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once

notice of intended procurement means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both

offset means any condition or undertaking that requires the use of domestic content, a domestic supplier, the licensing of technology, technology transfer, investment, counter-

trade or similar action to encourage local development or to improve the balance of payments accounts

open tendering means a procurement method whereby all interested suppliers may submit a tender

qualified supplier means a supplier that a procuring entity recognises as having satisfied the conditions for participation

selective tendering means a procurement method whereby the procuring entity invites only qualified suppliers to submit a tender

services includes construction services, unless otherwise specified

supplier means a person or group of persons that provides or could provide a good or service to a procuring entity

technical specification means a tendering requirement that:

- sets out the characteristics of:
 - goods to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production; or
 - services to be procured, or the processes or methods for their provision including any applicable administrative provisions;
- addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service; or
- sets out conformity assessment procedures prescribed by a procuring entity.

Appendix 1 – Agreements by Agency and Thresholds

	Singapore	Chile	Korea	United States of America	Japan
Goods Threshold	\$657k	\$657k	\$657k	\$657k	\$657k
Services Threshold	\$657k	\$657k	\$657k	\$657k	\$657k
Construction Threshold	\$9.247m	\$9.247m	\$9.247m	\$9.247m	\$9.247m
Aboriginal Housing Office Group of Staff		✓		✓	
Advocate for Children and Young People	✓		✓	✓	✓
Attorney General’s Department		✓	✓	✓	✓
Board of Studies, Teaching and Education Standards	✓	✓	✓	✓	✓
Community Relations Commission		✓	✓	✓	✓
Crown Solicitors Office	✓				
Department of Aboriginal Affairs		✓		✓	
Department of Ageing, Disability and Home Care		✓		✓	
Department of Arts, Sport and Recreation		✓		✓	
Department of Commerce		✓		✓	
Department of Community Services		✓		✓	
Department of Corrective Services		✓		✓	
Department of Education	✓	✓	✓	✓	✓

Department of Environment and Climate Change		✓		✓	
Department of Family and Community Services	✓		✓		✓
Department of Finance, Services and Innovation	✓		✓		✓
Department of Industry, Skills and Regional Development	✓				
Department of Juvenile Justice		✓		✓	
Department of Justice	✓				
Department of Lands		✓		✓	
Department of Liquor, Gaming and Racing				✓	
Department of Natural Resources, Mines and Water				✓	
Department of Planning		✓		✓	
Department of Planning and Environment	✓				
Department of Planning and Infrastructure			✓		✓
Department of Premier and Cabinet	✓	✓	✓	✓	✓
Department of Primary Industries		✓		✓	
Department of State and Regional Development		✓		✓	
Department of Trade and Investment, Regional Infrastructure and Resources			✓		✓
Department of Water and Energy		✓		✓	
Environment Protection Authority	✓		✓		✓
Fire and Rescue NSW	✓		✓		✓

Health Care Complaints Commission	✓		✓	✓	✓
Information and Privacy Commission (Does not include the Privacy Commission)	✓		✓		✓
Legal Aid Commission	✓	✓	✓	✓	✓
Ministry of Health	✓	✓	✓	✓	✓
Ministry for Police and Emergency Services		✓	✓	✓	✓
Motor Accidents Authority		✓	✓	✓	✓
Motor Vehicle Repair Industry Authority				✓	
Multicultural NSW	✓				
New South Wales Crime Commission	✓	✓	✓	✓	✓
New South Wales Electoral Commission	✓	✓	✓	✓	✓
New South Wales Fire Brigades		✓		✓	
NSW Food Authority	✓	✓	✓	✓	✓
New South Wales Ombudsman	✓	✓	✓	✓	✓
NSW Rural Assistance Authority	✓	✓	✓	✓	✓
New South Wales Rural Fire Service	✓	✓	✓	✓	✓
Office for Children		✓			
Office of the Children's Guardian				✓	
Office of the Director of Public Prosecutions NSW	✓	✓	✓	✓	✓
Office of Environment and Heritage	✓				

Office of Local Government	✓	✓		✓	
Office of the Health Care Complaints Commission		✓			
Office of Science and Medical Research				✓	
Parliamentary Counsel's Office	✓			✓	
Police Integrity Commission	✓	✓	✓	✓	✓
Public Service Commission	✓		✓		✓
Public Trustee				✓	
State Emergency Service	✓	✓	✓	✓	✓
State Insurance Regulatory Authority	✓				
Sydney Harbour Foreshore Authority	✓	✓	✓	✓	✓
Sydney Olympic Park Authority	✓	✓	✓	✓	✓
The Audit Office of New South Wales	✓	✓	✓	✓	✓
Tourism New South Wales		✓		✓	
The Treasury	✓	✓	✓	✓	✓
Transport for NSW	✓ _{xx}	✓	✓ _{xx}	✓	✓ _{xx}
Workcover NSW		✓	✓	✓	✓

xx Does not cover procurement by Transport for NSW, related to the functions of the Transport Construction Authority, and the Country Rail Infrastructure Authority or its successor agencies

Appendix 2 – Exemptions for each Agreement

Singapore Australia Free Trade Agreement	Chile Australia Free Trade Agreement	Korea Australia Free Trade Agreement	United States Australia Free Trade Agreement	Japan Australia Free Trade Agreement
<p>This Agreement does not apply to:</p> <ul style="list-style-type: none"> a. the acquisition or rental of land, existing buildings or other immovable property or the rights thereon; b. non-contractual agreements or any form of assistance that an agency, provides, including cooperative agreements, grants, loans, equity infusions, guarantees, subsidies, fiscal incentives and sponsorship arrangements; c. the procurement or acquisition of: fiscal agency or depository services; liquidation and management services for regulated financial institutions; or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities; d. public employment contracts (including contracts for labour hire); e. procurement: <ul style="list-style-type: none"> (i) conducted for the specific purpose of providing international assistance, including development aid; (ii) funded by an international organisation or foreign or international grants, loans or other assistance to which procurement procedures or conditions of the international 	<p>This Agreement does not apply to:</p> <ul style="list-style-type: none"> a. non-contractual agreements or any form of assistance provided by an agency, including grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, cooperative agreements and sponsorship arrangements; b. procurement for the direct purpose of providing foreign assistance; c. procurement funded by international grants, loans or other assistance; d. public employment contracts (including contracts for labour hire); e. procurement of a financial service f. procurement of goods and services by a procuring entity from another entity of the same Party, or between a procuring entity of a Party and a regional or local government of that Party, where no other supplier has been asked to tender; g. procurement of goods and services outside the territory of the procuring Party, for consumption outside the territory of the procuring Party; h. procurement funded by grants and/or sponsorship payments received from a person other than a procuring entity of a Party; i. procurement of fiscal agency or 	<p>This Agreement shall not apply to:</p> <ul style="list-style-type: none"> a. procurement of goods and services by a procuring entity of a party from another entity of that party, or between a procuring entity of a party and a regional or local government of that party; b. non-contractual agreements or any form of assistance that a party provides, including grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, and cooperative agreements; c. procurement for the direct purpose of providing foreign assistance; d. procurement of research and development services; e. procurement of goods and services outside the territory of the procuring party, for consumption outside the territory of the procuring party; f. public employment contracts (including contracts for labour hire); g. procurement conducted under the particular procedures or conditions of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project, or under the particular procedures or conditions of an international organisation, or funded 	<p>This Agreement does not apply to:</p> <ul style="list-style-type: none"> a. non-contractual agreements or any form of assistance that a Party or a government enterprise provides, including grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, cooperative agreements, and sponsorship arrangements; b. procurement of goods and services by a Party from its own entities and provision of goods or services by or between a procuring entity of a Party and a regional or local government of that Party; c. purchases funded by international grants, loans, or other assistance, where the provision of such assistance is subject to conditions inconsistent with this Chapter; d. purchases funded by grants and sponsorship payments from persons not listed in Annex 15-A of Chapter 15 of the Australia-USA Free Trade Agreement; e. procurement for the direct purpose of providing foreign assistance; f. procurement of research and development services g. procurement of goods and services (including construction) outside the territory of the procuring Party, for consumption outside the 	<p>This Agreement shall not apply to:</p> <ul style="list-style-type: none"> a. procurement of goods and services by a procuring entity from another entity of the same Party, or between a procuring entity of a Party and a regional or local government of that Party; b. non-contractual agreements or any form of assistance that a Party provides, including grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, cooperative agreements, and sponsorship arrangements; c. procurement for the direct purpose of providing international assistance, including development aid; d. procurement of research and development services; e. procurement of goods and services outside the Area of the procuring Party, for consumption outside the Area of the procuring Party; f. public employment contracts (including contracts for labour hire); g. procurement conducted under the particular procedure or condition of an international organisation, or funded by international grants, loans, or other assistance where the applicable procedure or condition would be inconsistent with this

<p>organisation or donor apply. But, if the procedures or conditions of the international organisation or donor do not restrict the participation of suppliers then the procurement shall accord the other nation's suppliers no less favourable treatment than domestic suppliers.</p> <p>f. procurement of a good or service outside the territory of the Party of the procuring entity, for consumption outside the territory of that Party; and</p> <p>g. procurement of asset management and financial advisory services pertaining to reserves held by each Party's Government or its entities.</p>	<p>depository services, liquidation and management services for regulated financial institutions, or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes, derivatives and other securities; or</p> <p>j. the procurement or rental of land, existing buildings or other immovable property or rights thereon where not part of an arrangement for procurement of construction services.</p>	<p>by international grants, loans, or other assistance;</p> <p>h. procurement funded by grants or sponsorship payments received from a person other than a procuring entity of a Party;</p> <p>i. the acquisition or rental of land, buildings, or other immovable property or rights thereon where not part of an arrangement for procurement of construction services;</p> <p>j. procurement of financial advisory and asset management services pertaining to reserves held by each Party, including for the purposes of funding retirement benefits; or</p> <p>k. the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes, derivatives and other securities</p>	<p>territory of the procuring Party; and</p> <p>h. acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, and sale and distribution services for government debt.</p>	<p>Chapter;</p> <p>h. procurement funded by grants and sponsorship payments received from a person other than a procuring entity of a Party;</p> <p>i. the acquisition or rental of land, existing buildings, or other immovable property or rights thereon;</p> <p>j. procurement conducted under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; and</p> <p>k. procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes, derivatives and other securities.</p>
<p>This agreement does not prevent an agency from adopting or maintaining a measure:</p> <p>a. necessary to protect public morals, order or safety;</p> <p>b. necessary to protect human, animal or plant life or health;</p> <p>c. necessary to protect intellectual property; or</p> <p>d. relating to the good or service of a person with disabilities, of philanthropic or not-for-profit institutions, or of prison labour.</p>	<p>This agreement does not prevent an agency from adopting or maintaining measures:</p> <p>a. necessary to protect public morals, order or safety;</p> <p>b. necessary to protect human, animal, or plant life or health;</p> <p>c. necessary to protect intellectual property;</p> <p>d. relating to goods or services of handicapped persons, of philanthropic or not for profit institutions, or of prison labour;</p>	<p>This agreement does not prevent an agency from adopting or maintaining measures:</p> <p>a. necessary to protect public morals, order or safety;</p> <p>b. necessary to protect human, animal or plant life or health;</p> <p>c. necessary to protect intellectual property;</p> <p>d. relating to goods or services of handicapped persons, of philanthropic or not-for-profit institutions, or of prison labour;</p>	<p>This agreement does not prevent an agency from adopting or maintaining measures:</p> <p>a. necessary to protect public morals, order or safety;</p> <p>b. necessary to protect human, animal or plant life or health;</p> <p>c. necessary to protect intellectual property; or</p> <p>d. relating to the goods or services of handicapped persons, of philanthropic or not for profit institutions, or of prison labour.</p>	<p>This agreement does not prevent an agency from:</p> <p>a. taking any action which it considers necessary for the protection of its essential security interests relating to government procurement indispensable for national security or for national defence purposes.</p> <p>b. imposing, enforcing or maintaining measures:</p> <p>i) necessary to protect public morals, order or safety;</p> <p>ii) necessary to protect human, animal or plant life or health;</p>

<p>This includes environmental measures necessary to protect human, animal or plant life or health.</p> <p>Subject to the measure not being applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail, or a disguised restriction on international trade.</p>	<p>e. indispensable for national security or for national defence purposes, or</p> <p>f. which it considers necessary for the protection of its essential security interests relating to government procurement.</p> <p>This includes environmental measures necessary to protect human, animal, or plant life or health.</p> <p>Subject to the measure not being applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail, or a disguised restriction on international trade.</p>	<p>e. which are considered necessary for the protection of its essential security interests relating to government procurement indispensable for national security or for national defence purposes.</p> <p>This includes environmental measures necessary to protect human, animal or plant life or health.</p> <p>Subject to the measure not being applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail, or a disguised restriction on international trade.</p>	<p>This includes environmental measures necessary to protect human, animal or plant life or health.</p> <p>Subject to the measure not being applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail, or a disguised restriction on international trade.</p>	<p>iii) necessary to protect intellectual property; or</p> <p>iv) relating to goods or services of handicapped persons, of philanthropic or not-for-profit institutions or of prison labour.</p> <p>This includes environmental measures necessary to protect human, animal, or plant life or health.</p> <p>Subject to the measure not being applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail, or a disguised restriction on international trade.</p>
<p>Section 3.1 shall not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import regulations or formalities, and measures affecting trade in services other than measures governing covered procurement.</p>	<p>Section 3.1 shall not apply to measures concerning customs duties and other charges of any kind imposed on, or in connection with, importation, the method of levying such duties and charges or other import regulations, including restrictions and formalities, and measures affecting trade in services other than measures governing covered procurement.</p>	<p>Section 3.1 shall not apply to measures regarding customs duties and other charges of any kind imposed on, or in connection with, importation, the method of levying such duties and charges, or other import regulations including restrictions and formalities, and measures affecting trade in services other than measures regarding covered procurement.</p>	<p>Section 3,1 shall not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import regulations or formalities, and measures affecting trade in services other than measures governing covered procurements.</p>	<p>Section 3.1 shall not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import regulations and formalities, and measures affecting trade in services other than measures governing covered procurement.</p>
<p>This agreement shall not cover</p> <p>a. the procurement of health and welfare services, education services or motor vehicles.</p> <p>b. procurements undertaken by a covered entity on behalf of a non-covered entity.</p> <p>c. procurement related to the functions of the Privacy Commission by the Information and Privacy Commission</p>	<p>This agreement does not cover</p> <p>a. the procurement of health and welfare services, education services or motor vehicles.</p> <p>b. procurements undertaken by a covered entity on behalf of a non-covered entity.</p>	<p>This agreement does not cover</p> <p>a. the procurement of health and welfare services, education services, or motor vehicles.</p> <p>b. the procurements undertaken by a covered entity on behalf of a non-covered entity.</p>	<p>This agreement does not cover</p> <p>a. the procurement of health and welfare services, education services, or motor vehicles.</p> <p>b. procurements undertaken by a covered entity on behalf of a non-covered entity.</p>	<p>This agreement does not cover</p> <p>a. the procurement of health and welfare services, education services, or motor vehicles.</p> <p>b. procurements undertaken by a covered entity on behalf of a non-covered entity.</p>

d. procurement by Transport for NSW, related to the functions of the Transport Construction Authority, and the Country Rail Infrastructure Authority or its successor agencies.				
This agreement shall not cover the procurement of blood and blood-related products, including plasma derived products.		This agreement does not cover the procurement of blood and blood products, including plasma-derived products.		This agreement does not cover the procurement of blood and blood-related products, including plasma derived products.
The agreement shall not cover the procurement of: a. plasma fractionation services; b. government advertising services; c. health and welfare services; and d. research and development services	This agreement does not cover the procurement of a. research and development services, b. plasma fractionation services or c. government advertising services.	This agreement does not cover the procurement of: a. plasma fractionation services; b. government advertising services; c. legal services; d. telecommunications; e. educational services; f. financial services; g. transport services; or h. health and welfare services.	This agreement does not cover the procurement of a. plasma fractionation services or b. government advertising services.	This agreement does not cover the procurement of: a. plasma fractionation services; b. government advertising services; c. health and welfare services; d. legal services e. telecommunications; f. education services; g. financial services; and h. transport services.
This agreement shall not apply to: a. any form of preference to benefit small and medium enterprises; b. measures to protect national treasures of artistic, historic, or archaeological value; c. measures for the health and welfare of indigenous people; and d. measures for the economic and social advancement of indigenous people. e. procurement funded by grants and sponsorship payments received from persons not listed in Annex 3A to the Agreement to Amend SAFTA; and f. procurement by a procuring entity from another government entity.	This agreement does not apply to: a. any form of preference to benefit small and medium enterprises; b. measures to protect national treasures of artistic, historic, or archaeological value; c. measures for the health and welfare of indigenous people; and d. measures for the economic and social advancement of indigenous people.	This agreement does not apply to: a. any form of preference to benefit small and medium enterprises; b. measures to protect national treasures of artistic, historic, or archaeological value; c. measures for the health and welfare of indigenous people; and d. measures for the economic and social advancement of indigenous people.	This agreement does not apply to: a. any form of preference to benefit small and medium enterprises; b. measures to protect national treasures of artistic, historic, or archaeological value; c. measures for the health and welfare of indigenous people; and d. measures for the economic and social advancement of indigenous people.	This agreement does not apply to: a. any form of preference to benefit small and medium enterprises; b. measures to protect national treasures of artistic, historic, or archaeological value; c. measures for the health and welfare of Indigenous people; d. measures for the economic and social advancement of Indigenous people; and e. procurement of financial advisory and asset management services pertaining to reserves held, including for the purposes of funding retirement benefits, by any entity listed Appendix 1.

Appendix 3 – Covered Procurement Process Checklist*

Activity	Required Yes/No	Due Date
Is this a covered procurement?		
Identify the international agreements that apply to the covered procurement		
Identify the procurement method to be used		
Publish a Notice of Intended Procurement		
Additional information for a Selective Tender		
Additional information for a panel arrangement		
Is a Notice of a Multi-Use list required		
Selection/evaluation criteria developed		
Conditions for participating identified		
Tender closing date set		
Tender advertised		
Are there any changes to the tender documentation?		
Will there be any negotiations regarding the procurement?		
Is there procurement being cancelled or not proceeded with?		
Have all required records been maintained?		
Successful supplier(s) notified		
Unsuccessful supplier(s) notified		
Award information published		

*This is a checklist only and not an assurance of compliance.

Appendix 4 – Deadlines

1. An agency that uses selective tendering shall establish that the final date for the submission of a request for participation shall not, in principle, be less than 25 days from the date of publication of the Notice of Intended Procurement. If a state of urgency duly substantiated by the procuring entity renders this time period impracticable, the time period may be reduced to no less than 10 days.
2. Except as provided in paragraph 3 and paragraph 4, a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days from the date on which:
 - (a) in the case of open tendering, the Notice of Intended Procurement is published; or
 - (b) in the case of selective tendering, the procuring entity notifies the suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.
3. An agency may reduce the time period for tendering set out in paragraph 2 by five days for each one of the following circumstances:
 - (a) the Notice of Intended Procurement is published by electronic means;
 - (b) the tender documentation is made available by electronic means from the date of the publication of the Notice of Intended Procurement; and
 - (c) the procuring entity accepts tenders by electronic means.
4. An agency may reduce the time period for tendering set out in paragraph 2 to no less than 10 days if:
 - (a) the agency has published an annual procurement plan at least 40 days and no more than 12 months in advance of the publication of the Notice of Intended Procurement, and the annual procurement plan contains:
 - (i) a description of the procurement;
 - (ii) the approximate final dates for the submission of tenders or requests for participation;
 - (iii) the address from which documents relating to the procurement may be obtained; and
 - (iv) as much of the information that is required for the Notice of Intended Procurement as is available;
 - (b) a state of urgency duly substantiated by the procuring entity renders impracticable the time period for tendering set out in paragraph 3; or
 - (c) the procuring entity procures commercial goods or services.
5. The use of paragraph 3, in conjunction with paragraph 4, shall in no case result in the reduction of the time periods for tendering set out in paragraph 2 to less than 10 days.
6. An agency shall require all interested or participating suppliers to submit requests for participation or tenders in accordance with a common deadline. These time periods, and any extension of these time periods, shall be the same for all interested or participating suppliers.