

AUSTRALIA NEW ZEALAND – GOVERNMENT PROCUREMENT AGREEMENT (Revised 1997)

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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:

- 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*
- 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.

Responsibility for this Agreement lies with Ministers responsible for procurement throughout Australia and New Zealand. It is administered by the Australian Procurement and Construction Council (APCC) which includes senior officials representing all Australian State, Territory and Commonwealth governments. New Zealand has full participation rights on the APCC. Changes to the Agreement are negotiated through the Ministers responsible for procurement on the advice of the APCC.

Objectives of the Agreement

The objectives of the ANZ Government Procurement Agreement are to create and maintain a single ANZ government procurement market to maximise opportunities for competitive ANZ suppliers and to 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, States, Territories and New Zealand
- 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 cooperation 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.

Definitions

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

(a) **Designated Bodies:** bodies designated in each jurisdiction to 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 related services:** includes goods alone, services alone or goods and services conjointly. Computer software is defined as 'goods' for this purpose. 'Related services' include architectural, design, engineering, project design, project management and related consultancy services provided in conjunction with the supply of goods or construction activities.

(c) **Ministers responsible for procurement:** Ministers with portfolio responsibility for procurement policy where such direct responsibility exists. Otherwise the definition will mean Ministers with portfolio responsibility for the ANZGPA.

(d) **Procurement:** includes purchase, hire, lease, rental, exchange and competitive tendering and contracting (outsourcing) arrangements.

(e) **Government procurement:** procurement by government bodies, that is departments and other bodies including statutory authorities, which are controlled by the Governments of the Parties to the Agreement and excludes procurement by any local authority, body corporate or other legal entity that has the power to contract, except where the Parties exercise their 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.

(f) **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*.

(g) **Value for money:** the primary determinant in government procurement of goods and services. Application of the value for money principle is aimed at achieving the best available outcome for money spent in terms of the procuring agency's needs. The test of the best available value for money requires relevant comparison of the whole of life costs relating directly to the procurement.

Whole of life considerations include:

- . fitness for purpose and other considerations of quality
- . performance
- . price
- . delivery
- . accessories and consumables
- . service support
- . disposal.

ANZ Government Procurement Agreement

2. *It is agreed that, except as stated otherwise in this Agreement, the Parties will:*
 - (a) *at all times conduct their procurement activities in accordance with the spirit and intent of this Agreement*
 - (b) *ensure that all 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) *promote opportunities for ANZ suppliers to compete for government business on the basis of value for money and avoid purchasing practices which are biased in favour of foreign goods and suppliers*
 - (e) *use value for money, including appropriate whole of life costs and benefits, as the primary determinant in all procurement decisions (ie whether purchased, rented, leased, outsourced or exchanged)*
 - (f) *achieve maximum practicable simplicity and consistency in the application of procurement policies, practices and procedures.*
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 (b) and (c) of this Agreement, Parties to the Agreement will not use amongst themselves any form of procurement practice which:*
 - *discriminates against*
 - *is biased against*
 - *or has the effect of denying equal access or opportunity to**any ANZ supplier.*
5. *Nothing in the Agreement precludes the Parties from developing new purchasing policy, or using purchasing policy to implement other policies, provided that in doing so there is no discrimination on the basis of place of origin or contravention of any commitments of the Parties under domestic and international government procurement agreements.*

Exemptions

6. Exemptions to this Agreement may be sought by government bodies which meet the criteria set out in Annexe 1.
7. Ministers seeking exemption for a government body in their portfolio should apply to their Minister responsible for procurement. The procurement Minister will make a decision on exemption and advise his or her Ministerial counterparts in other jurisdictions, together with the APCC Secretariat, of those entities which have been granted exemption. The APCC Secretariat will be responsible for ensuring that the Appendix to Annexe 1 is maintained.
8. Exemptions from this Agreement are listed at the Appendix to Annexe 1.
9. Certain classes of procurement are exempt from the Agreement. These exemptions are set out in Annexe 1.
10. 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 jurisdictional Ministers responsible for procurement.

Monitoring

11. It is agreed that monitoring of compliance with the Agreement will be undertaken by bodies designated by the Parties for this purpose, in accordance with procedures set out in Annexe 2 to this Agreement. The Parties will cooperate in this process.
12. The APCC will report annually to the Ministers responsible for procurement, on the implementation of the Agreement and achievement against the objectives of the Agreement.

Administrative guidelines

13. Guidelines for the assistance of purchasing officers and other interested bodies in administering this Agreement may be drawn up by the APCC. These will be incorporated in Annexes to the Agreement.

Review of the Agreement

14. The Agreement will be reviewed at five-yearly intervals unless otherwise decided unanimously by Ministers responsible for procurement.
15. 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, Ministers responsible for procurement.

Status of Annexes

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

EXEMPTIONS FROM THE APPLICATION OF THE ANZ GPA

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 government bodies for certain classes of procurement, and for procurement undertaken in accordance with specific government policies.

It is not intended that any government body will be granted full exemption from the Agreement. When considering applications for partial exemptions, jurisdictions will exercise their authority with due diligence in accordance with the objectives of the Agreement.

The list of special exemptions granted under this Agreement is set out in the Appendix.

Criteria

Criteria against which requests for exemptions can be considered are set out below. Where these criteria apply, and circumstances permit, bodies are required to formally apply for specific exemptions in accordance with Clauses 6 and 7 of the Agreement.

Entities

1. Bodies which trade in substantial competition with the private sector and which would be placed at a significant commercial disadvantage if they were required to fully comply with all provisions of the Agreement.
2. Joint bodies with other governments, not party to the ANZ Government Procurement Agreement.
3. Bodies funded primarily from specific special levies on particular industries, or community groups or from special grants or public donations.

Classes of procurement

4. Internal procurement of goods and related services by a government from its own Departments or authorities is exempt from all provisions of the Agreement where no other supplier has been asked to tender. If, however, public tenders are called for goods and related services, the provisions of the Agreement apply irrespective of whether a government body submits a tender.
5. The procurement of proprietary items required to ensure machinery or equipment integrity is exempt from the provisions 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.
6. The urgent procurement of goods and related services in the event of emergencies, such as natural disasters, periods of national security or UN peacekeeping operations, are exempt from all provisions of the Agreement.

7. Procurement of proprietary equipment of a work, health or safety nature specified in Industrial Agreements is exempt from the provisions of 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.
8. 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.
9. Procurement undertaken by the Parties in accordance with specific policies of a non-procurement nature will not be deemed to be in contravention of the provisions of the Agreement. These might include environmental and social justice policies.

Exemptions

Jurisdictions will be allowed six (6) months from date of signing to advise on special exemptions pertaining to the criteria outlined under Annexe 1.

MONITORING PROCEDURES

Principles

1. (a) Within each jurisdiction there will be one clearly identified point of contact for complaints (see Appendix to Annexe 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) The monitoring system will be based on the examination of alleged breaches following complaints by a Party to the Agreement.
- (c) Each Party will periodically carry out a policy audit in order to ensure consistent application of the Agreement.

Procedures

2. (a) A complaint should first be raised with the Designated Body in the jurisdiction 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 in the jurisdiction in which the purchasing authority is located will investigate the complaint in accordance with the Agreement and report in writing to the Designated Body in the complainant's jurisdiction (a copy of the report is to be provided to the Secretary, APCC 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 in the complainant's jurisdiction, then the complaint will lapse.
 - (d) If satisfactory resolution is not achieved, the Designated Body may then refer the matter to the relevant Minister responsible for procurement in the jurisdiction in which the purchasing authority is located for further investigation and decision.
3. In cases where complainants are located in more than one jurisdiction all relevant Designated Bodies and, where necessary, Ministers shall be involved in the procedures.

Contacts for designated bodies

VICTORIA

Executive Director
Victorian Government Purchasing Board
11th Floor, 1 MacArthur Street
EAST MELBOURNE VIC 3002
Tel: (03) 9651 2162
Fax: (03) 9651 2161

WESTERN AUSTRALIA

Chief Executive Officer
State Supply Commission
5th Floor, Dumas House
2 Havelock Street
WEST PERTH WA 6005
Tel: (08) 9222 5700
Fax: (08) 9222 5750

NORTHERN TERRITORY

Assistant Secretary
Procurement Policy Unit
Department of Asian Relations,
Trade and Industry
GPO Box 4160
DARWIN NT 0801
Tel: (08) 8999 7795
Fax: (08) 8999 7657

SOUTH AUSTRALIA

Chief Executive Officer
State Supply Board
GPO Box 549
ADELAIDE SA 5001
Tel: (08) 8204 8537
Fax: (08) 8204 8581

NEW ZEALAND

Senior Adviser
Border, Industry & Environment Policy Group
Ministry of Commerce
PO Box 1473
WELLINGTON NEW ZEALAND
Tel: 472 0030
Fax: 473 8949

NSW

The Chairperson, State Contracts Control Board
Department of Public Works & Services
McKell Building
2-24 Rawson Place
SYDNEY NSW 2000
Tel: (02) 9372 8710
Fax: (02) 9372 8844

TASMANIA

Director
Government Accounting, Procurement & Property Branch
Department of Treasury & Finance
GPO Box 147B
HOBART TAS 7001
Tel: (03) 6233 3407
Fax: (03) 6223 2755

ACT

Manager
ACT Contracts & Purchasing
Department of Urban Services
GPO Box 158
CANBERRA ACT 2601
Tel: (02) 6207 5540
Fax: (02) 6207 7366

QUEENSLAND

Secretariat Officer
State Purchasing Council Secretariat
GPO Box 123
BRISBANE QLD 4001
Tel: (07) 3224 2708
Fax: (07) 3224 7921

COMMONWEALTH

General Manager
Resource Management Framework
Department of Finance and Administration
GPO Box 1920
CANBERRA ACT 2601
Tel: (02) 6275 3782
Fax: (02) 6275 3613

Signed for and on behalf of each of the Parties by:

THE HONOURABLE MIKE BOARD JP MLA)
Minister for Works; Services)

on the day of)
in the presence of)

THE HONOURABLE DAVID JULL MP)
Minister for Administrative Services)
Commonwealth of Australia)

on the day of)
in the presence of)

THE HONOURABLE CARL SCULLY MP)
Minister for Public Works and Services)
New South Wales)

on the day of)
in the presence of)

THE HONOURABLE ROGER M HALLAM JP)
Minister for Finance)
Victoria)

on the day of)
in the presence of)

THE HONOURABLE DR DAVID WATSON MLA)
Minister for Public Works and Housing)
Queensland)

on the day of)
in the presence of)

THE HONOURABLE DEAN BROWN MP)
Minister for Information and Contract Services)
South Australia)

on the day of)
in the presence of)

THE HONOURABLE RONALD CORNISH MHA)
Minister for Finance)
Tasmania)

on the day of)
in the presence of)

THE HONOURABLE BARRY COULTER MLA)
Minister for Transport & Works)
Northern Territory)

on the day of)
in the presence of)

THE HONOURABLE JOHN LUXTON MP)
Minister of Commerce)
New Zealand)

on the day of)
in the presence of)

PETER NOBLE GUILD)
Executive Director,)
Strategy and Business Group,)
Department of Urban Services)
Australian Capital Territory)

on the day of)
in the presence of)