

TREASURER'S INSTRUCTION 18

PROCUREMENT

Issued: 29 June 2021

Effective: 1 July 2021

Application

18.1 Subject to clause 18.2, these Treasurer's instructions apply to all public authorities and procurements by public authorities.

Note

Advice on the application and operation of these Treasurer's instructions may be obtained by contacting the Department of Treasury and Finance. Specific contact details for obtaining advice that relates to a particular part of these instructions are included on the Department's website www.treasury.sa.gov.au.

18.2 These instructions do not apply to:

18.2.1 The University of Adelaide; or

18.2.2 Flinders University; or

18.2.3 the University of South Australia; or

18.2.4 any other public authority exempted by the Treasurer under *Treasurer's Instruction 1 – Interpretation and Application*.

18.3 Where a public authority undertakes procurements in accordance with an emergency procurement policy approved by the Treasurer, the public authority will be taken to be compliant with these instructions.

Commencement

18.4 These instructions will commence on 1 July 2021.

Object

18.5 The objects of these instructions are to:

18.5.1 Promote good governance, contract management, transparency and record keeping by public authorities in the course of planning and undertaking procurements which create liabilities or potential liabilities for expenditure by public authorities; and

18.5.2 Promote compliance with whole-of-government procurement policies; and

18.5.3 Provide for reporting to the Department of Treasury and Finance about procurements by public authorities; and

18.5.4 Make Chief Executives of public authorities responsible for procurements by the public authority and for determining agency-specific procurement arrangements.

Interpretation

18.6 Terms defined in the *Public Finance and Audit Act 1987* and used in these instructions will have the same meaning in these instructions as they have in the Act.

18.7 In these instructions, unless the contrary intention appears:

- 18.7.1 **Acquisition plan** means a document that outlines the procurement methodology and sourcing strategy to be undertaken in a proposed procurement, prepared in accordance with the Procurement Planning Policy.
- 18.7.2 **Approach the market** means the formal process of notifying one or more potential suppliers of a procurement opportunity and inviting them to submit a response, quote, proposal or offer.
- 18.7.3 **Construction project** is a project that primarily involves the procurement of a construction work; and
- (a) includes:
 - (i) the acquisition and installation of fixtures, plant, equipment, appliances and fittings in conjunction with the construction work; and
 - (ii) the acquisition of survey, planning, design and other services in conjunction with the construction work; but
 - (b) does not include the acquisition of goods and services for the ongoing maintenance of a building or structure.
- 18.7.4 **Construction work** means:
- (a) building work (which has the same meaning as in the *Building Work Contractors Act 1995*); or
 - (b) the whole or part of the work of excavating or filling of land not constituting building work.
- 18.7.5 **Contract Management Policy** means the policy by that name approved by the Treasurer and administered by Procurement Services SA, establishing the requirements for effective contract management.
- 18.7.6 **Direct market approach** means a sourcing strategy for a procurement where only one supplier is invited to submit an offer;
- 18.7.7 **Expenditure** means any outflow from the resources of a public authority and may include such things as the payment of money, the transfer of assets, the provision of services, the replacement of an obligation with another obligation, or the conversion of an obligation to equity.
- 18.7.8 **Procurement Activity and Reporting System or PARS** means the software platforms and associated systems and databases administered by Procurement Services SA for the collection, analysis and disclosure of data relating to procurement by public authorities.
- 18.7.9 **Procurement** has the meaning set out in clause 18.8 of these instructions.
- 18.7.10 **Procurement Governance Policy** means the policy by that name approved by the Treasurer and administered by Procurement Services SA, establishing the governance requirements applying to procurement by public authorities.
- 18.7.11 **Procurement Planning Policy** means the policy by that name approved by the Treasurer and administered by Procurement Services SA, establishing the requirements for planning procurements.
- 18.7.12 **Procurement Services SA** means the business unit within the Department of Treasury and Finance responsible for across-government procurements, strategic advice to government relating to procurement,

and administering the procurement policies and guidelines applicable to public authorities.

- 18.7.13 **Sourcing Policy** means the policy by that name approved by the Treasurer and administered by Procurement Services SA, establishing the requirements for approaching the market, evaluating tenders, awarding contracts and undertaking post-sourcing reviews.

Meaning of procurement

18.8 In these instructions, **procurement** means the process undertaken by a public authority:

- 18.8.1 of acquiring goods or services for the public authority, including the acquisition of goods or services on behalf of another public authority or third party (including members of the public); or
- 18.8.2 for a construction project; or
- 18.8.3 for disposing of goods,

which involves expenditure by a public authority, and does not include the matters set out in clause 18.9.

18.9 These instructions do not apply to:

- 18.9.1 the provision of funding to a third party by a public authority that is a grant under Treasurer's Instruction 15; or
- 18.9.2 the engagement of a legal practitioner to provide legal services;¹ or
- 18.9.3 purchase of real property; or
- 18.9.4 any activity or class of activities determined by the Treasurer to not be a procurement for the purposes of this clause, and set out in the Schedule.

Determining the value of a procurement

18.10 The value of a procurement for the purposes of these instructions is to be determined by reference to the budget required by the public authority to meet the estimated total value of any expenditure commitments that may directly result from the proposed procurement, and is GST inclusive.

Public authorities must have a procurement framework

18.11 The Chief Executive of a public authority must ensure that:

- 18.11.1 a robust and transparent procurement framework for the public authority, prepared in accordance with the Procurement Governance Policy, is developed, documented, implemented and maintained; and
- 18.11.2 an internal review of the suitability of the public authority's procurement framework is conducted at least once in each financial year of the public authority; and
- 18.11.3 systems, processes and procedures are put in place to maximise compliance with the Procurement Governance Policy, the Procurement Planning Policy, the Sourcing Policy and the Contract Management Policy.

Alignment of public authorities

¹ **Note:** Public authorities must comply with Treasurer's Instruction 10 in relation to the engagement of legal practitioners.

- 18.12 A Chief Executive of a public authority ("**Aligned Public Authority**") may agree in writing with the Chief Executive of another public authority ("**Host Public Authority**") to use the procurement framework of the Host Public Authority.
- 18.13 Where two public authorities become aligned under clause 18.12 of these instructions:
- 18.13.1 the Chief Executive of the Aligned Public Authority:
 - (a) must notify Procurement Services SA of the agreement within 60 calendar days of the alignment agreement; and
 - (b) will be taken to comply with the Chief Executive's obligations under clauses 18.11, 18.28.1 and 18.28.2 of these instructions; and
 - 18.13.2 a procurement for the Aligned Public Authority can be undertaken by either the Aligned Public Authority or the Host Public Authority; and
 - 18.13.3 provision of information to Procurement Services SA through the PARS for the purposes of clauses 18.16, 18.17, 18.19 and 18.20 can be undertaken by either the Aligned Public Authority or the Host Public Authority;
 - 18.13.4 an acquisition plan for a procurement for the Aligned Public Authority can be approved and certified for the purposes of clauses 18.22.2 and 18.22.3 of these instructions by the Chief Executive or a person authorised by the Chief Executive of either the Aligned Public Authority or Host Public Authority; and
 - 18.13.5 an approval for the purposes of clause 18.25 of these instructions may be given by the Chief Executive of either the Aligned Public Authority or the Host Public Authority.
- 18.14 The agreement in writing between the Chief Executives under clause 18.12 must detail the respective responsibilities of each public authority in relation to procurements for the Aligned Public Authority, including responsibilities for:
- 18.14.1 the provision of information to Procurement Services SA through the PARS for the purposes of clauses 18.16, 18.17, 18.19 and 18.20; and
 - 18.14.2 acquisition plans and approvals for the purposes of clauses 18.13.2, 18.22.2, 18.22.3 and 18.25; and
 - 18.14.3 undertaking of procurements of the Aligned Public Authority;
 - 18.14.4 keeping and maintaining the departure register under clause 18.26.2.
- 18.15 Subject to clause 18.13, an alignment under clause 18.12 does not relieve the Aligned Public Authority or its Chief Executive from the obligations contained in these instructions.

Procurement reporting

- 18.16 By 1 July of each calendar year, public authorities must provide to Procurement Services SA through the PARS:
- 18.16.1 A description of all existing contracted expenditure as a result of a previous procurement above \$55,000; and
 - 18.16.2 A description of all known forecast procurements above \$55,000, for the next 24 month period.

Note

For the avoidance of doubt, this clause extends to all forecast procurements above \$55,000, which includes any amount above \$550,000.

- 18.17 Public authorities must use their best endeavours to ensure that the forecast procurements of the public authorities reported in PARS remain accurate and up-to-date, including by updating the information in PARS when a forecast procurement or new procurement is confirmed.
- 18.18 Public authorities must provide the information required under clauses 18.16 and 18.17 of these instructions in the manner and form required by Procurement Services SA.

Procurement reporting where Chief Executive approval required

- 18.19 By 1 July of each calendar year, the Chief Executive of the public authority must identify forecast procurements of the public authority above \$550,000 for the next 12 month period, and ensure that those procurements are accurately reported to Procurement Services SA through the PARS.
- 18.20 The Chief Executive of the public authority must approve the submission by the public authority of any confirmed procurement above \$550,000 to the PARS under clauses 18.16 and 18.17 of these instructions for the first time or to update the status of the procurement from forecast to confirmed.
- 18.21 The Chief Executive must not authorise another person on behalf of the Chief Executive to discharge the obligations of the Chief Executive under clauses 18.19 and 18.20 of these instructions.

Note

This may be a Chief Executive of a Host Public Authority in the case of an alignment of public authorities under clause 18.17.

Approval to approach the market

- 18.22 A person must not approach the market, or cause an approach to the market for any procurement above \$55,000 unless:
 - 18.22.1 The procurement has been reported to Procurement Services SA through the PARS in accordance with clauses 18.16 to 18.20; and
 - 18.22.2 An acquisition plan for the procurement has been approved by either the Chief Executive of the public authority or a person acting under an authorisation under clause 18.24 (up to the limit identified in the authorisation); and
 - 18.22.3 The person approving the acquisition plan under 18.22.2 certifies that the Procurement Planning Policy has been complied with, or that any departures from the Procurement Planning Policy have been sufficiently detailed in the acquisition plan.
- 18.23 A person must not take any action to divide a procurement to avoid approval thresholds.

Authority to approve acquisition plans

- 18.24 Subject to clause 18.25, the Chief Executive of a public authority may authorise a person or the holder of a specified position to approve acquisition plans with such monetary limits and other conditions as the Chief Executive thinks fit, provided that the authorisation is by instrument in writing and details any limits and conditions imposed on the authorisation.
- 18.25 Only a Chief Executive can approve an acquisition plan for a procurement above \$550,000 that involves a direct market approach.

Note

This may be a Chief Executive of a Host Public Authority in the case of an alignment of public authorities under clause 18.14.

Registers

18.26 The Chief Executive of a public authority must ensure that the following registers are maintained:

18.26.1 An **authorisation register** that sets out:

18.26.1.1 The persons, or the holders of specified positions, who are authorised under clause 18.24; and

18.26.1.2 The particulars of any limits, and any conditions, that apply in relation to each such person or position.

Note

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

18.26.2 A **departure register** that sets out:

18.26.2.1 All procurements above \$55,000 where there has been a departure from the Sourcing Policy or the Procurement Planning Policy; and

18.26.2.2 The particulars of and reasons for those departures.

Notes

This responsibility may be discharged by a Chief Executive of a Host Public Authority in the case of an alignment of public authorities under clause 18.14.

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

18.27 The Chief Executive of a public authority must make the registers required by clause 18.26 available to Procurement Services SA on request.

Additional responsibilities of Chief Executives

18.28 The Chief Executive of a public authority must ensure that:

18.28.1 responsibility for the procurement framework, and its operation and performance outcomes, is documented and assigned to appropriate senior officers; and

18.28.2 appropriate resources are allocated to develop, implement and maintain the public authority's procurement framework; and

18.28.3 any non-compliance with these instructions is documented and addressed in a reasonable manner and within a reasonable time; and

18.28.4 any failure to comply with the requirements of the procurement framework of the public authority is dealt with appropriately; and

18.28.5 appropriate mechanisms to ensure that the Chief Executive is informed about all relevant procurement compliance and governance matters are established and maintained; and

- 18.28.6 appropriate resources are allocated to maintain procurement capacity and capability and that appropriate resources are applied to complex or strategic (high risk) procurements; and
- 18.28.7 appropriate procurement and contract management information management systems are deployed and maintained within the public authority.

Transitional provisions

18.29 For the purpose of these transitional provisions:

- 18.29.1 A **Tier 1, Tier 2 or Tier 3 public authority** means a public authority with that tier of procurement authority granted by the State Procurement Board under policies made under the repealed *State Procurement Act 2004* immediately prior to the commencement of the *State Procurement Repeal Act 2020*.
- 18.29.2 A **prescribed public authority** means those public authorities classified as prescribed public authorities under the *State Procurement Act 2004* immediately prior to the commencement of the *State Procurement Repeal Act 2020*.

Tier 1, Tier 2 and Tier 3 public authorities

- 18.30 A procurement that has commenced but not completed prior to the commencement of these instructions that would have, immediately prior to the commencement of the *State Procurement Repeal Act 2020*, required approval by the State Procurement Board or delegate of the State Procurement Board, may be approved by the Chief Executive of the Tier 1, Tier 2 or Tier 3 public authority.
- 18.31 If an acquisition plan for a procurement by a Tier 1, Tier 2 or Tier 3 public authority above \$55,000 was approved prior to 1 July 2021, the process for completing that procurement can continue as if it were a procurement conducted under the procurement regime that applied to the Tier 1, Tier 2 or Tier 3 public authority immediately prior to 1 July 2021.
- 18.32 For the 2021 calendar year only, Tier 1, Tier 2 or Tier 3 public authorities must, on or before 1 September 2021, provide to Procurement Services SA through the PARS:
 - 18.32.1 A description of all existing contracted expenditure as a result of a previous procurement above \$55,000; and
 - 18.32.2 A description of all known forecast procurements above \$55,000, for the next 24 month period.

Note

For the avoidance of doubt, this clause extends to all forecast procurements above \$55,000, which includes any amount above \$550,000.

- 18.33 For the 2021 calendar year only, the Chief Executive of the Tier 1, Tier 2 or Tier 3 public authority must, on or before 1 September 2021, identify forecast procurements of the public authority above \$550,000 for the next 12 month period, and ensure that those procurements are accurately reported to Procurement Services SA through the PARS.
- 18.34 Between 1 July 2021 and 1 September 2021, clause 18.22.1 does not apply to Tier 1, Tier 2 and Tier 3 public authorities.
- 18.35 Subject to clauses 18.32 to 18.34, Tier 1, Tier 2 and Tier 3 public authorities must otherwise comply with these instructions.

Note

For the avoidance of doubt, the requirements in clauses 18.32 and 18.33 are substituted for the reporting obligations of public authorities in clauses 18.16 and 18.19 for the 2021 calendar year.

Prescribed public authorities

- 18.36 From the commencement of these instructions until 1 July 2022, prescribed public authorities are exempt from the application of these instructions.
- 18.37 If an acquisition plan for a procurement by a prescribed public authority above \$55,000 was approved prior to 1 July 2022, the process for completing that procurement can continue as if it were a procurement conducted under the procurement regime that applied to the prescribed public authority immediately prior to 1 July 2022.

SCHEDULE

1. For the purposes of clause 18.9.4, a construction project (as defined in these instructions) above \$165,000 is not a procurement covered by these instructions.