

NORTHERN TERRITORY OF AUSTRALIA

PROCUREMENT REGULATIONS

As in force at 18 October 2006

Table of provisions

1	Citation	1
2	Definitions.....	1
3	Requisitions for supplies.....	1
4	Requirements for tier one, tier two and tier three supplies	2
5	Requirements for tier four and tier five supplies	2
6	Procurement Review Board.....	2
7	Government contracts	4
8	Certificate of exemption.....	4
9	Orders	4
10	Details of certain contracts to be published	5

ENDNOTES

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PROCUREMENT REGULATIONS

Regulations under the *Procurement Act*

1 Citation

These Regulations may be cited as the *Procurement Regulations*.

2 Definitions

In these Regulations:

across government contract means a whole of government or common use period contract established for supplies used commonly across Agencies.

Agency Minister, for an Accountable Officer, means the Minister administering the Agency of the Accountable Officer.

certificate of exemption means a certificate of exemption issued under regulation 8.

order means an order issued under regulation 9.

public tender means a tender submitted as the result of a public invitation for the submission of tenders.

select tender means a tender for which the request for tender is made available to only a limited and select list of suppliers.

tier one, tier two, tier three, tier four or **tier five**, for supplies, means supplies with an estimated total value within the range specified in the definition of **Tier One, Tier Two, Tier Three, Tier Four** or **Tier Five** respectively in the procurement directions.

3 Requisitions for supplies

- (1) A person shall requisition supplies for the Territory on a form approved by the Accountable Officer.
- (2) A requisition under subregulation (1) shall be approved by the Accountable Officer.

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- (3) Before the Accountable Officer approves a requisition under subregulation (2), the requisition shall be endorsed as to the availability of funds sufficient to procure the supplies specified in the requisition.

4 Requirements for tier one, tier two and tier three supplies

- (1) Subject to these Regulations, before an amount is expended on tier one, tier two and tier three supplies, the Accountable Officer must:
 - (a) for tier one supplies – obtain at least one written tender; or
 - (b) for tier two or tier three supplies – obtain written tenders from at least 3 established suppliers.
- (3) For the purposes of subregulation (1)(b), if the Accountable Officer is of the opinion that it is not practicable to obtain tenders from 3 established suppliers, the Accountable Officer must invite the lesser number of tenders that is practicable and must record in writing the reason for not obtaining 3 tenders.
- (4) An Accountable Officer must, if required by a Procurement Review Board, give the Board full details of any contract arranged as the result of a tender.

5 Requirements for tier four and tier five supplies

- (1) Subject to subregulation (3), before an amount is expended on tier four or tier five supplies, the Accountable Officer must invite public tenders for the supplies.
- (2) A tender for tier four or tier five supplies must not be accepted or be capable of being accepted except with the prior approval of the Procurement Review Board.
- (3) Subregulation (1) does not apply to supplies for which a certificate of exemption is issued.

6 Procurement Review Board

- (1) A Procurement Review Board established under section 6 of the Act shall consist of not less than 3 members appointed by the Minister.
- (2) The Minister may appoint a member of a Procurement Review Board to be the Chairman of the Board.
- (3) An appointment under subregulation (1) or (2) may be by reference to a particular statutory office or an office under the *Public Sector Employment and Management Act* and, where such an

appointment is made, a person holding for the time being or from time to time that office or performing the duties of that office shall be the member or the Chairman, as the case may be, accordingly.

- (4) An appointment:
- (a) under subregulation (1) may allow the member to nominate another person, being a person of a class that is specified in the instrument of appointment, to be a member in the place of the member; or
 - (b) under subregulation (2) may allow the Chairman to nominate another person, being a person of a class that is specified in the Chairman's instrument of appointment, to be the Chairman in the place of the Chairman,

and a person so nominated shall be the member or the Chairman, as the case may be, accordingly, for the period for which the person was nominated.

- (5) At a meeting of a Procurement Review Board 3 members shall constitute a quorum.
- (6) Except to the extent specified in an instrument of appointment under subregulation (1) or (2), the procedures of the Procurement Review Board shall be as determined by the Chairman.
- (7) The functions of a Procurement Review Board are, subject to section 11 of the Act:
- (a) to review all proposed procurement activity for tier four and tier five supplies;
 - (b) to review all tenders and public tender recommendations referred to it;
 - (c) to review all requests for exemption from the requirement to publicly invite tenders for tier four or tier five supplies;
 - (d) to review all recommendations for prequalifying and preselecting suppliers;
 - (e) to consider and, where it thinks appropriate or as directed by the Minister, give its approval for the acceptance of tenders referred to in regulation 5(2);
 - (g) to approve the obtaining of supplies under an existing contract between a supplier and the Commonwealth, a State or another Territory of the Commonwealth; and

(h) to determine the eligibility of suppliers to enter into contracts with the Territory.

(8) A Procurement Review Board has such powers as are necessary to enable it to carry out its functions.

7 Government contracts

(1) If supplies are available to the Territory under an across government contract, the supplies must be obtained under the contract unless the Accountable Officer otherwise directs.

(2) Where supplies are available to the Territory under an existing contract between a supplier and the Commonwealth, a State or another Territory of the Commonwealth, the supplies may be obtained subject to Procurement Review Board approval.

8 Certificate of exemption

(1) An Accountable Officer may approve the use of a select tender for supplies by issuing a certificate of exemption.

(2) An Accountable Officer must not issue a certificate of exemption:

(a) for tier four supplies – without the approval of the Agency Minister; or

(b) for tier five supplies – without the approval of the Agency Minister and the endorsement of the Minister administering this Act.

(3) An Accountable Officer must not use a select tender for tier four or tier five supplies unless its use has been endorsed by the Procurement Review Board.

9 Orders

An order for supplies shall:

(a) be in the form approved by the Accountable Officer;

(b) be signed by the Accountable Officer; and

(c) contain details of the supplies specified in the requisition made under regulation 3.

10 Details of certain contracts to be published

- (1) Subject to subregulation (2), where the amount to be expended under a contract for supplies is in excess of \$10 000, the Accountable Officer shall cause details of the contract to be published in the *Gazette*.
- (2) Publication under subregulation (1) shall not be made where:
- (a) the supplies are provided by the Territory, the Commonwealth or a State or another Territory of the Commonwealth;
 - (b) the supplies are obtained under an existing contract; or
 - (c) publication of the details is, in the opinion of the Minister, contrary to the public interest.

ENDNOTES
1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
Gaz = <i>Gazette</i>	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2 LIST OF LEGISLATION***Procurement Regulations (SL No. 15, 1995)***

Notified	10 May 1992
Commenced	10 May 1992

Amendments of Procurement Regulations (SL No. 24, 2000)

Notified	21 June 2000
Commenced	21 June 2000

Amendments of Procurement Regulations (SL No. 40, 2001)

Notified	8 August 2001
Commenced	8 August 2001

Procurement Amendment Regulations 2006 (SL No. 9, 2006)

Notified	1 March 2006
Commenced	1 March 2006 (r 3)

Procurement Amendment Regulations (No. 2) 2006 (SL No. 32, 2006)

Notified	18 October 2006
Commenced	18 October 2006

3 LIST OF AMENDMENTS

r 2	amd No. 40, 2001, r 1; No. 9, 2006, r 4
r 4	sub No. 24, 2000, r 1 amd No. 9, 2006, r 5; No. 32, 2006, r 3
r 5	sub No. 9, 2006, r 6 amd No. 32, 2006, r 4
r 6	amd No. 40, 2001, r 2; No. 9, 2006, r 7
r 7	amd No. 9, 2006, r 8
r 8	amd No. 24, 2000, r 2 sub No. 9, 2006, r 9 amd No. 32, 2006, r 5

ENDNOTES

r 10 amd No. 9, 2006, r 10