

2012

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**GOVERNMENT PROCUREMENT AMENDMENT REGULATION 2012
(No 1)**

EXPLANATORY STATEMENT

SL2012-10

**Presented by
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Treasurer**

Summary

The *Government Procurement Act 2001* (the Act) governs procurement activities undertaken on behalf of the Territory. This Regulation amends the *Government Procurement Regulation 2007* (the Regulation), which is a regulation made under section 52 of the Act.

Overview of the Regulation

The *Government Procurement Amendment Regulation 2012* (No 1) (the Amendment Regulation) introduces two amendments to the Regulation.

The first amendment relates to Section 10 of the Regulation which, for a particular procurement, enables a territory entity to be exempt from compliance with the requirements of sections 6 and 9 of the Regulation, relating to the type of approach to market that must be undertaken at the prescribed quotation and tender thresholds. Section 10 provides for exemption from the threshold where the responsible chief executive officer is satisfied that the benefit of the exemption outweighs the benefit of compliance and provides four examples of when an exemption may apply. The examples are provided to assist to clarify the meaning of the exemption provision.

The Amendment Regulation inserts two additional examples of when a territory entity's responsible chief executive officer may exempt a procurement from the quotation and tender threshold requirements. The two new examples are in relation to social procurement and to the use of another jurisdiction's common use arrangements, also known as 'piggybacking'. While the list of examples provided in the Regulation is not exhaustive, the two new examples will provide chief executive officers with assurance that they may use the exemption provision in these specified circumstances.

The second amendment involves the inclusion of two new sections in the Regulation to set the threshold value for a notifiable contract and a notifiable amendment, respectively, at \$25,000. The Act prescribes that notifiable contracts and notifiable contract amendments must be published on a web site, which is known as the ACT Government Contracts Register.

This amendment is consistent with a recent amendment to the Act to remove the setting of the notifiable contract and notifiable amendment thresholds. The threshold setting has been removed from the Act because the Government had decided to increase to \$25,000 the threshold for notifiable contracts and notifiable amendments. The setting of the threshold by regulation will avoid any confusion that may result from having a different threshold cited in the Act from that prescribed by Regulation. Having the thresholds set by regulation will also make it simpler to effect any future change to the thresholds.

Details

Clause 1 – Name of Regulation

The regulation is the *Government Procurement Amendment Regulation 2012 (No 1)*.

Clause 2 – Commencement

This clause provides that the Amendment Regulation will commence on the same day as the commencement of section 4 of the *Government Procurement Amendment Act 2012*, which amends the Act to have the notifiable contract threshold set by regulation.

Clause 3 – Legislation amended

This clause explains that the Amendment Regulation amends the *Government Procurement Regulation 2007*.

Clause 4 – Procurement of goods, services or works – exemption from quotation and tender requirements

Section 10 (2), new examples 5 and 6

This clause provides two additional examples of circumstances in which the responsible chief executive officer may, for a particular procurement, exempt a Territory entity from complying with the requirements of sections 6 and 9 of the Regulation. These sections relate to the procurement method that must be used for a procurement at or above the prescribed quotation and tender thresholds. The two examples are for social procurement and for the use of a common use arrangement established by another jurisdiction (also known as ‘piggybacking’).

In undertaking any procurement, a Territory entity must pursue value for money and, in the case of an exemption from the tender and quotation thresholds, the responsible chief executive must also be satisfied that the benefit of the exemption outweighs the benefit of compliance with the threshold requirements.

In the example for social procurement, the pursuit of a social benefit would be secondary to the main objective of the procurement, but not to the degree that the social benefit is insignificant. The social benefit being sought through the procurement should align with Government priorities and overall the responsible chief executive officer must be convinced value for money is likely to be achieved.

In the case of procurement through another jurisdiction’s contractual arrangements, there is an expectation that the arrangement is robust, satisfies the Territory’s procurement requirements and reflects value for money achievable under current market conditions.

Clause 5 – New sections 12A and 12B

This clause inserts two new sections to prescribe the thresholds for a notifiable contract and a notifiable amendment in the Regulation. Section 12A prescribes the threshold for a notifiable contract as \$25,000 and section 12B prescribes the threshold for a notifiable amendment also as \$25,000.