

Government Procurement Rules 2024

Disallowable instrument DI2024-275

made under the

the Government Procurement Act 2001, s42 (1) (Government procurement rules).

EXPLANATORY STATEMENT

INTRODUCTION

The explanatory statement relates to the Government Procurement Rules 2024 made under the Government Procurement Act 2001. It has been prepared to assist the reader. It does not form part of the Government Procurement Rules 2024 and has not been endorsed by the Legislative Assembly.

In the 2023-24 financial year, the ACT Government's spent \$1.67 billion on procurements that support the delivery of quality public services, infrastructure, economic growth, and community wellbeing. This expenditure needs to be undertaken in alignment with community values; conducted with transparency, fairness and rigour; and achieve value for money.

Engaged in this process are procurement officers across the ACT Public Service, subject matter experts and advisors, financial delegates, Directors-General and Chief Executives of Territory entities, as well as the Government Procurement Board.

Each and every individual in this process is bound by a rigorously defined legal framework underpinned by the Financial Management Act 1996, the Government Procurement Act 2001, the Government Procurement Regulation 2007 and the Public Sector Management Act 1994. The ACT Public Service and the Ministerial codes of conduct articulate the behaviours that support individual accountabilities.

Amendments to the Government Procurement Act 2001 and the Government Procurement Regulation 2007 took effect from 1 July 2024. Part 7 Section 42 of the Government Procurement Act prescribes that the Minister responsible for Procurement may make rules in relation to procurements undertaken by Territory entities.

The Government Procurement Rules (the Rules) establishes the rules that Territory entities must follow when exercising a function in relation to procurement, the Rules capture requirements that are not otherwise provisioned in other legislation. The Rules that must be complied with in undertaking procurement are denoted by the term 'must'. In addition, the Rules refer to matters denoted by "should" which indicate better practice, to which Territory entities should aspire. This ensures a balance between directional and better practice positions.

In support of this balance, Territory entities not covered by the Rules, that is the Office of the Legislative Assembly, or an officer of the Assembly, are encouraged to consider the Rules in their procurement.

The Rules cover all stages of the procurement lifecycle and support the delivery of transparent, efficient and effective procurement practices. Notably, the Rules:

- a. clarify that unless required by law, for example in connection with efficient and effective use of public resources, Ministers will not be involved in the conduct of procurement processes or direct officials in Territory entities about the conduct of procurement processes.
- b. support the recent inclusion of Probity in the Act, by strengthening existing guidance as provided in the ACT Government's Probity in Procurement Guide.
- c. specify that in addition to any training requirements set by a Territory entity, those undertaking or involved with a procurement must, within the preceding 12 months, have completed the ACT Government's Probity in Procurement eLearning Module.
- d. require decision makers to obtain professional advice where they seek to depart from the recommendations of an evaluation team. This advice could include probity advice, legal advice, technical advice, or advice from the Government Procurement Board. Further requirements have been set in relation to recording in writing the Territory entity's response to, and any actions arising from the advice.
- e. create a contemporary position for the allocation of risk, consistent with the ACT Insurance Authority (ACTIA), so that risks are borne by the party best placed to manage them.
- f. align contractual risk management measures such as regarding insurance and liability requirements with the scale, scope and risk of a procurement, ensuring that excessive insurance or other contractual requirements are not applied, and that in any case suppliers are not required to take out insurance unless identified as the preferred respondent and contract negotiation commences. This is in response to feedback from the Better Regulation Taskforce to reduce cost barriers for Canberra Region Enterprises, Small to Medium Enterprise and Aboriginal and Torres Strait Islander, supporting broader participation and greater competition in the procurement process.
- g. introduce rigour around procurement from existing arrangements, including interjurisdictional arrangements.
- h. provide better practice around ICT and cyber security. It is intended that this will continue to be augmented as the space matures.

- i. ensure alignment with the requirements in international trade agreements regarding the awarding of contracts, unless not in the public interest to do so.

The Rules demonstrate the ACT Government's commitment to a rigorous, transparent, accountable procurement framework that upholds the highest standards of ethics, probity and integrity.

Approval

This Disallowable Instrument commences on the day after it is notified.

The Rules are to be read in conjunction with the Act and Regulation and other relevant legislation, policies and better practice guides to enable Territory entities to exercise a function in relation to procurement that demonstrates best practice.