



Australian Capital Territory

Government Procurement Amendment Act 2007

A2007-11

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Australian Capital Territory

Government Procurement Amendment Act 2007

A2007-11

An Act to amend the *Government Procurement Act 2001*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

J2006-383

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 Name of Act

This Act is the *Government Procurement Amendment Act 2007*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Legislation amended

This Act amends the *Government Procurement Act 2001*.

Note This Act also repeals other legislation (see s 44).

4 Long title

substitute

An Act about procurement by the Territory and territory entities, and for other purposes

5 New section 2A

insert

2A Meaning of *procurement*

In this Act:

procurement—

- (a) means the process of acquiring goods, services, works or property by purchase, lease, rental or exchange; and
- (b) includes the process of disposing of goods, works or property including by sale.

**6 Meaning of *territory entity*
Section 3 (2)**

substitute

- (2) However, *territory entity* does not include—
 - (a) The University of Canberra; or
 - (b) a Territory-owned corporation; or
 - (c) another entity established under the Corporations Act; or
 - (d) an entity declared under the regulations not to be a territory entity.

7 New section 3A

insert

3A Application of Act

This Act does not apply to the grant of a licence or lease of land, or the sale of a lease of land, under the *Land (Planning and Environment) Act 1991* or the *Planning and Land Act 2002*.

8 New section 3B

insert

3B Responsible chief executive officer to ensure Act complied with

The responsible chief executive officer for a territory entity must ensure that the entity complies with this Act.

9 Section 6

substitute

6 Functions of board

The functions of the board are—

- (a) to review, and give advice to territory entities on, procurement issues; and
- (b) to review, and give advice on—
 - (i) procurement proposals and activities referred to the board by a Minister or responsible chief executive officer; or
 - (ii) procurement proposals for procurement matters declared by the Minister; and
- (c) to review procurement proposals of territory entities in accordance with the regulations; and
- (d) to consider, advise on and, if appropriate, endorse procurement practices and methods for use by territory entities; and
- (e) to provide advice to the Minister on any issue relevant to the procurement activities of territory entities or the operation of this Act; and

- (f) to exercise any other function given to the board under this Act or any other Territory law.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

10 Procurement guidelines Section 7

omit

11 Section 11

substitute

11 Constitution of board

The board consists of the following 7 part-time members:

- (a) the chairperson;
- (b) the deputy chairperson;
- (c) 2 public employee members;
- (d) 3 non-public employee members.

12 Appointment of members Section 12 (2)

substitute

- (2) A person appointed as chairperson, deputy chairperson, or as a public employee member, must be a public employee.

Note **Public employee** is defined in the Legislation Act, dict, pt 1.

13 Section 12 (4)

substitute

- (4) The instrument appointing, or evidencing the appointment of, a member must state whether the member is appointed as chairperson, deputy chairperson, a public employee member or a non-public employee member.

**14 Ending of appointment of members
Section 16 (1)**

substitute

- (1) The Minister must end the appointment of the chairperson, deputy chairperson, or a public employee member, if the person stops being a public employee.

**15 Time and place of meetings
Section 18 (2)**

omit

**16 Procedure governing proceedings of board
Section 19 (2)**

substitute

- (2) If the chairperson is absent, the deputy chairperson presides.
- (2A) If the chairperson and deputy chairperson are absent, the member chosen by the members present presides.

17 Section 19A heading

substitute

19A Board quorum**18 Section 19A (2) to (4)**

substitute

- (2) However, the review of a prescribed procurement matter may be carried out at a meeting of the board consisting of—
- (a) the chairperson, or the deputy chairperson, and 1 non-public employee member; or
 - (b) 2 public employee members and 1 non-public employee member.

Note The board's functions include reviewing procurement proposals and activities referred to the board by a minister or responsible chief executive officer, and procurement proposals of territory entities in accordance with the regulations (see s 6 (b) and (c)).

- (3) Subsection (2) does not apply to a prescribed procurement matter if—
- (a) the chairperson gives a direction that the subsection does not apply to the matter; or
 - (b) a member tells the chairperson that the member objects to the matter being reviewed by the board as constituted under the subsection.

- (4) In this section:

prescribed procurement matter means any of the following that is approved, in writing, by the chairperson for subsection (2):

- (a) a procurement proposal referred to the board by a Minister or responsible chief executive officer;

- (b) a procurement activity referred to the board by a Minister or responsible chief executive officer;
- (c) a procurement proposal referred to the board in accordance with the regulations;
- (d) a procurement proposal for a procurement matter stated in a declaration under section 22B (Minister may declare procurement matters to be reviewed).

Note Power to make a statutory instrument includes power to make different provision for different classes (see Legislation Act, s 48).

procurement proposal means a proposal by a territory entity for procurement.

19 New part 2A

insert

Part 2A Procurement activities

22A Procurement principle—value for money

- (1) A territory entity must pursue value for money in undertaking any procurement activity.
- (2) Value for money means the best available procurement outcome.
- (3) In pursuing value for money, the entity must have regard to the following:
 - (a) probity and ethical behaviour;
 - (b) management of risk;
 - (c) open and effective competition;
 - (d) optimising whole of life costs;
 - (e) anything else prescribed by regulation.

22B Minister may declare procurement matters to be reviewed

- (1) The Minister may declare the procurement matters for which a procurement proposal must be reviewed by the board.

Examples of declarations

- 1 procurement matters with the same risk profile
- 2 procurement matters above a stated value threshold

Note 1 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Note 2 Power to make a statutory instrument includes power to make different provision for different classes (see Legislation Act, s 48).

- (2) A declaration under subsection (1) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

22C Procurement proposal or activity may be referred to board

The responsible Minister or responsible chief executive officer may refer a procurement proposal or activity to the board for review and advice.

20 Section 23

substitute

23 Application—pt 3

- (1) To remove any doubt, this part applies in relation to a contract entered into by—
- (a) a territory entity with an excluded body; or

(b) an excluded body as an agent of a territory entity.

Example

A government department (representing the Territory) enters into a notifiable contract with a Territory owned corporation. The government department, but not the Territory owned corporation, is required to notify the contract under pt 3 (Notifiable contracts).

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) In this section:

excluded body means a body that is not included as a territory entity under section 3 (2) (Meaning of *territory entity*).

**21 What is a *notifiable contract*
Section 25 (1)**

substitute

(1) For this part, a *notifiable contract* is a written contract for procurement entered into by the Territory or a territory entity.

22 Section 25 (2) (a)

omit

\$50 000

substitute

\$20 000

23 Section 25 (2), example

substitute

Example—par (a)

The consideration for a contract for the purchase of swings by the Territory is \$18 500. The contract is later amended to increase the total consideration to \$25 500. The contract, as amended, is a notifiable contract.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

24 Section 26

substitute

26 Meaning of *notifiable amendment*

For this part, a ***notifiable amendment*** of a notifiable contract is any amendment that, either alone or counted with another amendment or other amendments that have not been notified in the notifiable contracts register—

- (a) increases the total consideration for the contract by at least the greater of—
 - (i) 10% (or, if another percentage is prescribed under the regulations, the other percentage) of the total consideration for the contract as already notified in the notifiable contracts register; and
 - (ii) \$20 000 (or, if another amount is prescribed under the regulations, the other amount); or
- (b) substantially changes the scope or nature of the goods, services, works or property to be procured under the contract.

Example

The consideration for a contract between the Territory and Acme Pty Ltd for the supply of road runner retention devices is \$190 000.

The minimum value for notification of an amendment, or a series of amendments, of the contract is \$20 000 (ie the greater of \$20 000 or 10% of the value of the contract which is \$19 000). The contract is amended on 3 occasions.

The 1st and 2nd amendments are for \$15 000 each. While neither of the amendments is separately notifiable, the total of the 2 amendments is \$30 000 and each of them is therefore a notifiable amendment. When the 2 amendments are notified on the register, the 2 amendments cannot be counted towards any other notifiable amendment. They increase the total consideration for the contract to \$220 000.

The 3rd amendment is for \$21 000. It is not a notifiable amendment because, even though it is more than \$20 000, it is less than 10% of the total consideration for the contract as amended by all previous notifiable amendments, ie \$22 000.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

25 Contents of register

Section 28 (1) (g)

substitute

- (g) if a notifiable amendment of the contract is made—
- (i) the change in—
 - (A) the value of the consideration to which the amendment relates; or
 - (B) the scope or nature of the goods, services, works or property to which the amendment relates; and
 - (ii) the value of the total consideration, or estimated total consideration, for the contract because of the amendment; and
 - (iii) the date the amendment was made;

**26 Public access to material on register
Section 29 (1)**

substitute

- (1) The chief executive must ensure, as far as practicable, that a copy of the material mentioned in section 28 (1) for a notifiable contract is accessible on a web site approved by the chief executive—
 - (a) at all times; and
 - (b) for at least 2 years after the day the notifiable contract expires.

**27 Grounds for confidentiality of information
Section 35 (3)**

substitute

- (3) The responsible territory entity for the contract may delegate the entity's functions under this section to a public employee.
- (4) In this section:
personal information—see the *Privacy Act 1988* (Cwlth), section 6.
public employee—see the *Legislation Act*, dict, pt 1.

28 Section 38

substitute

38 Contracts and information to be given to auditor-general

The responsible territory entity for a reportable contract must, if requested by the auditor-general, give the auditor-general the contracts and information the auditor-general requests.

29 Section 39

substitute

39 Responsible territory entity's reporting obligations for contracts etc

- (1) The responsible territory entity for a reportable contract must, for each relevant reporting period, give the appropriate Legislative Assembly committee either—
 - (a) a list of the following:
 - (i) the reportable contracts that became notifiable contracts during the relevant period;
 - (ii) the reportable contracts that had confidential text changed during the relevant period; or
 - (b) a statement that no reportable contracts became notifiable or changed during the relevant period.
- (2) The list must contain—
 - (a) the following information for each reportable contract mentioned in subsection (1) (a) (i):
 - (i) the parties to the contract;
 - (ii) a brief description of what the contract is for;
 - (iii) the date the contract was made;
 - (iv) the date the contract ends;
 - (v) the value of the total consideration, or estimated total consideration, for the contract; and
 - (b) for each reportable contract mentioned in subsection (1) (a) (ii)—the thing that the change relates to; and
 - (c) any other information prescribed by regulation.

-
- (3) The entity may also give the committee any other information the entity considers appropriate.
 - (4) The entity must give the list or statement to the committee within 21 days after the day each relevant reporting period ends.
 - (5) The entity must, if asked by the committee, give the committee the information the committee requires about the decision to agree to the inclusion of confidential text in the contract.
 - (6) In this section:

appropriate Legislative Assembly committee means a standing committee of the Legislative Assembly nominated, in writing, by the Speaker.

confidential text includes text that purports to be confidential text.

reportable contract means a notifiable contract that contains confidential text.

reporting period means a 6-month period ending on 31 March or 30 September.

- (7) A nomination under subsection (6) is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

39A Auditor-general's reporting obligations for contracts etc

- (1) This section applies if the auditor-general requests a copy of a reportable contract under section 38.
- (2) The auditor-general must report to the appropriate Legislative Assembly committee on whether the auditor-general is satisfied that confidential text in the contract complies with section 35 (1) (a) or (b) (Grounds for confidentiality of information).
- (3) In this section:

appropriate Legislative Assembly committee—see section 39 (6).

confidential text includes text that purports to be confidential text.

30 **No liability for complying with pt 3**
Section 42 (2), definition of *reportable contract*

omit

section 38 (1)

substitute

section 39 (6)

31 **Section 43**

substitute

43 **Application—pt 4**

This part applies to a contract entered into by the Territory or a territory entity for procurement, other than a contract—

- (a) with a consideration of at least \$10 000 (or, if another amount is prescribed by regulation, the other amount); and
- (b) that states that this part does not apply to it.

32 **Interest on unpaid accounts**
Section 45 (1)

substitute

- (1) This section applies if—
 - (a) the Territory or a territory entity does not pay a commercial account in full by the relevant date for the account; and
 - (b) the person to whom the account is payable requests, in writing, that the Territory, or the territory entity, pay interest on the amount of the account that remains unpaid from time to time after the payment date.

**33 Reporting of excluded contracts
Section 48 (2), definition of *responsible chief executive***

omit

**34 Discounts for prompt payments
Section 49**

omit

**35 Responsible chief executive to ensure Act complied with
Section 50**

omit

**36 Regulation-making power
Section 52 (2)**

substitute

- (2) The regulations may—
- (a) make provision in relation to procurement by territory entities; and
 - (b) provide that prescribed things are, or are not, goods, services, works or property for this Act; and
 - (c) provide that prescribed activities are, or are not, for this Act—
 - (i) procurement; or
 - (ii) procurement activities.

37 **New part 10**

insert

Part 10 **Transitional provisions**

100 **Procurement guideline**

- (1) The *Government Procurement (Quotation and Tender Thresholds) Guideline 2003 (No 1)* in force under this Act, section 7 immediately before commencement day is taken to be a regulation made under this Act, section 52 (Regulation-making power) and applies, with any necessary changes, for the purposes of this Act.
- (2) To remove any doubt and without limiting subsection (1), the guideline mentioned in subsection (1) may be amended or repealed as if it had been made as a regulation by the Executive under this Act, section 52.
- (3) To remove any doubt, the guideline mentioned in subsection (1) is taken—
 - (a) to have been notified under the Legislation Act on the day the *Government Procurement Amendment Act 2007* is notified; and
 - (b) to have commenced on commencement day; and
 - (c) not to be required to be presented to the Legislative Assembly under the Legislation Act, section 64 (1).
- (4) Subsections (1), (2) and (3) are laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (5) This section expires on commencement day.

- (6) In this section:

commencement day means the day the *Government Procurement Amendment Act 2007* commences.

101 Notifiable contracts

- (1) This section applies to a contract made by the Territory or a territory entity before the commencement of this section.
- (2) Part 3 (Notifiable contracts) does not apply to the contract unless—
- (a) the contract was a notifiable contract when the contract was made, or became a notifiable contract before the commencement of this section; or
 - (b) an amendment to the contract made after the commencement of this section increases the total consideration for the contract by at least \$20 000.
- (3) Subsections (1) and (2) are laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (4) This section expires 1 year after the day it commences.

38 Dictionary, definitions of *board* and *chairperson*

substitute

board means the Australian Capital Territory Government Procurement Board established under section 5.

chairperson means the chairperson of the board.

39 Dictionary, new definitions of *department* and *deputy chairperson*

insert

department—see the *Financial Management Act 1996*, dictionary.

deputy chairperson means the deputy chairperson of the board.

40 Dictionary, definition of *member*

substitute

member means—

- (a) the chairperson; or
- (b) the deputy chairperson; or
- (c) a public employee member; or
- (d) a non-public employee member.

41 Dictionary, new definition of *procurement*

insert

procurement—see section 2A.

42 Dictionary, definition of *procurement guidelines*

omit

43 Dictionary, new definition of *responsible chief executive officer*

insert

responsible chief executive officer means—

- (a) for a department—the responsible chief executive of the department under the *Financial Management Act 1996*; or
- (b) for a territory authority—the chief executive officer of the authority under the *Financial Management Act 1996*; or
- (c) for a joint venture or trust in which the Territory or a territory entity has a controlling interest—the responsible chief executive of the department or territory entity that is responsible for matters most closely related to that interest.

44 Instruments repealed

The following instruments are repealed:

- *Government Procurement (Approved Procurement Units) Guideline 2002 (No 1)* DI2002-57
- *Government Procurement (Principles) Guideline 2002* DI2002-58.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 6 March 2007.

2 Notification

Notified under the Legislation Act on 13 June 2007.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Government Procurement Amendment Bill 2007, which was passed by the Legislative Assembly on 29 May 2007.

Clerk of the Legislative Assembly

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