



Australian Capital Territory

Government Procurement (Principles) Guideline 2002

DI2002-58

Republication No 2

Effective: 3 August 2004 – 19 December 2006

Republication date: 3 August 2004

Last amendment made by DI2004-174

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Government Procurement (Principles) Guideline 2002* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 3 August 2004. It also includes any amendment, repeal or expiry affecting the republished law.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



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Australian Capital Territory

Government Procurement (Principles) Guideline 2002

made under the

Government Procurement Act 2001

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1 Name of guideline

This guideline is the *Government Procurement (Principles) Guideline 2002*.

3 Definitions

In this guideline:

Act means the *Government Procurement Act 2001 (ACT)*.

board means the Australian Capital Territory Government Procurement Board.

local, in relation to a supplier, means a supplier who operates a business, and has business premises, in the Australian Capital Territory or the Cities of Goulburn and Queanbeyan or the local government areas of Bega Valley, Bombala, Boorowa, Cooma-Monaro, Crookwell, Eurobodalla, Gundagai, Gunning, Harden, Mulwaree, Snowy River, Tallaganda, Tumbarumba, Tumut, Yarrowlunla, Yass or Young in New South Wales.

supplier means an entity who seeks to provide, is providing or has provided goods, services or works to, or on behalf of, a Territory entity.

Note An entity includes an individual, see Legislation Act, dict, pt 1, def *entity*.

Territory entity—see the *Government Procurement Act 2001*, dictionary.

4 Notes

A note included in this guideline is explanatory and is not part of this guideline.

Note See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Application of guideline and exemptions

- (1) This guideline applies to all Territory entities, other than a Territory entity exempted under subclause (3).
- (2) A Territory entity may make written application to the board for exemption from this guideline or a provision of this guideline.
- (3) The board may give or refuse to give an exemption.
- (4) An exemption must be in writing.

6 Procurement principles

In undertaking a procurement activity, a Territory entity must apply the following procurement principles:

- (a) value for money; and
- (b) open and effective competition; and
- (c) probity and ethical behaviour; and
- (d) environmental sustainability; and
- (e) local industry development; and
- (f) management of risk; and
- (g) ethical suppliers.

6A Principle about procurement of computer software

- (1) In the procurement of computer software, a Territory entity should, as far as practicable—
 - (a) consider open source software; and
 - (b) avoid the procurement of—
 - (i) software that does not comply with open standards or standards recognised by the ISO; and

- (ii) software for which support or maintenance is provided only by an entity that has the right to exercise exclusive control over its sale or distribution.
- (2) This is in addition to the procurement principles to be applied under clause 6.
- (3) For subclause (1) (b) (i), software does not ***comply with open standards*** unless the specifications for data representations used by the software (including, for example, file formats for data storage, transmission and network protocols) are completely and accurately documented and available to the public for use, application or review without restriction.

Note An example is part of the instrument, 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).

- (4) In this clause:

ISO means the International Organization for Standardization.

Note ISO standards are available on the internet at the web site www.standards.com.au.

open source definition means the document of that name published by the open source initiative, as in force from time to time.

Note 1 The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act 2001, s 47 (5) or (6) is not disapplied (see s 47 (7)).

Note 2 A notifiable instrument must be notified under the Legislation Act.

open source initiative means the non-profit incorporated organisation of that name dedicated to managing and promoting the open source definition for the good of the community.

open source software means software that is the subject of a licence that complies with the open source definition.

- (5) This clause expires 3 years after the day it commences.

7 Value for money

- (1) A Territory entity must be able to demonstrate value for money in undertaking any procurement activity.
- (2) In this guideline, value for money means the best available procurement outcome.
- (3) A decision on price alone does not necessarily represent best value for money.
- (4) To assess what is value for money, a Territory entity must, in relation to proposals from suppliers relating to a procurement activity—
- (a) evaluate all proposals against the applicable evaluation criteria; and
 - (b) assess all relevant risks, costs and benefits on a whole-of-life basis.

8 Open and effective competition

- (1) A Territory entity must—
- (a) ensure that procurement activities are carried out in a transparent way; and
 - (b) ensure effective competition in carrying out a procurement activity; and
 - (c) avoid specifications for goods, services or works that favour a particular supplier or group of suppliers unless the requirements of the entity cannot be reasonably met without such specifications.
- (2) If another procurement guideline requires the Territory entity to use a public tender process for a procurement activity, the entity must—

- (a) comply with that procurement guideline; and
- (b) publicise the public tender process in a way that gives all suppliers a reasonable opportunity to be aware of the procurement activity; and
- (c) give suppliers equal access to the opportunities offered by the public tender process.

9 Probity and ethical behaviour

- (1) A Territory entity must comply with the highest standards of integrity, probity, professional conduct and ethical behaviour in carrying out all procurement activities.
- (2) A Territory entity must ensure that a person who is carrying out a procurement activity for the entity—
 - (a) performs the task honestly and without favour or prejudice; and
 - (b) spends public money efficiently and effectively and in accordance with the law and government policy; and
 - (c) deals fairly, impartially and consistently with suppliers; and
 - (d) keeps confidential all sensitive information obtained as part of the procurement activity; and
 - (e) does not have an actual conflict of interest in relation to the procurement activity; and
 - (f) does not seek or accept any remuneration, gift, advantage or other benefit except as may be allowed in the normal course of their duties.
- (3) Subclause (2) is in addition to the obligations of a public employee under the *Public Sector Management Act 1994*.

10 Environmental sustainability

A Territory entity must consider environmental sustainability in the procurement of goods, services or works.

11 Local industry development

A Territory entity must give consideration to maximising opportunities for local industry development, including the need to maximise the opportunity for local suppliers to compete for the provision of goods, services or works.

12 Management of risk

A Territory entity must, in the procurement of goods, services or works—

- (a) carry out an identification, analysis and evaluation of likely risks; and
- (b) implement sound risk management strategies.

13 Ethical Suppliers

- (1) A Territory entity must:
 - (a) ensure that appropriate consultative mechanisms are established to consult with those bodies operating in the Territory to advocate the interests of employees, suppliers and subcontractors;
 - (b) ensure that suppliers that tender for the provision of prescribed works and services, are required to certify that they have complied with their employee and industrial relations obligations;
 - (c) ensure that contracts for the provision of prescribed works and services contain terms allowing for the verification of compliance by suppliers and subcontractors with their employee and industrial relations obligations; and

(d) ensure that the necessary policies and procedures exist for exercising scrutiny over the performance by suppliers and subcontractors of prescribed works and services in relation to their employee and industrial relations obligations.

(2) In this clause:

contract means a written contract for the procurement of prescribed works or services having a total consideration, or estimated total consideration, worth \$20,000 or more;

employee means a natural person who is employed under a contract of service to provide a supplier of prescribed works or services or a subcontractor with his or her labour, except for the provision of professional or information technology service;

employee and industrial relations obligations means compliance with:

- (a) prescribed legislation; and
- (b) determinations made by tribunals of competent jurisdiction in respect of the interpretation, breach or any other matter concerning any prescribed legislation;

Note Examples of employee and industrial relations obligations may typically include payment of remuneration; training; annual holidays; long service leave entitlements; occupational health and safety; workers' compensation; injury management, (including rehabilitation); legal age of employment; discrimination; and superannuation. This list is non exhaustive.

prescribed legislation for the purpose of this clause includes:

- (a) awards or industrial agreements made pursuant to any legislation applicable to a supplier or subcontractor;
- (b) *Long Service Leave Act 1976 (ACT)*;
- (c) *Occupational Health and Safety Act 1989 (ACT)*;

- (d) *Long Service Leave (Building and Construction Industry) Act 1981* (ACT);
- (e) *Long Service Leave (Contract Cleaning Industry) Act 1999* (ACT);
- (f) *Workers' Compensation Act 1951* (ACT);
- (g) *Workplace Relations Act (1996)* (Cwlth);
- (h) *Superannuation Guarantee (Administration) Act 1992* (Cwlth).

prescribed works or services means those works or services that will require the exertion of labour by employees in the performance of a contract; and

Note Examples of prescribed works and services include maintenance, construction, cleaning, horticultural and gardening services. This list is non exhaustive.

subcontractor means an entity that is contracted by a supplier to provide services or works in connection with a contract between a Territory entity and the supplier.

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	RI = reissue
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
num = numbered	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

Government Procurement (Principles) Guideline 2002 (No 2) DI2002-58

notified LR 13 June 2002
commenced 14 June 2002 (cl 2)

as amended by

Government Procurement (Principles) Guideline Amendment Act 2003 A2003-63

notified LR 18 December 2003
s 1, s 2 commenced 18 December 2003 (LA s 75 (1))
remainder commenced 19 December 2003 (s 2)

Government Procurement (Principles) (Ethical Suppliers) Guideline 2004 (No 1) DI2004-174

notified LR 2 August 2004
cl 1, cl 2 commenced 2 August 2004 (LA s 75 (1))
remainder commenced 3 August 2004 (LA s 73 (2) (a))

4 Amendment history

Name of guideline

cl 1 am R1

Commencement

cl 2 om R1 LA s 89 (4)

Definitions

cl 3 def **Act** ins DI2004-174 cl 4

Procurement principles

cl 6 am DI2004-174 cl 5

Principle about procurement of computer software

cl 6A ins A2003-63 s 4
exp 19 December 2006 (cl 6A (5))

Ethical Suppliers

cl 13 ins DI2004-174 cl 6

Endnotes

5 Earlier republications

5 Earlier republications

Republication No	Amendments to	Republication date
1	A2003-63	30 June 2004

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