

Australian Capital Territory

Government Procurement (Secure Local Jobs) Amendment Regulation 2018 (No 1)

Subordinate law SL2018–22

made under the

Government Procurement Act 2001

EXPLANATORY STATEMENT

Overview

This Amendment Regulation amends the *Government Procurement Regulation 2007* (the Regulation).

The amendments provide more information about the requirements inserted into the *Government Procurement Act 2001* (Procurement Act) by the *Government Procurement (Secure Local Jobs) Amendment Act 2018* (Amendment Act) as part of the Secure Local Jobs Package.

The amendments in the Amendment Regulation prescribe:

- (a) what a tenderer is to include in their Labour Relations, Training and Workplace Equity (LRTWE plan);
- (b) what details are to be included in the Secure Local Jobs Code Register (register) for each Secure Local Jobs Code Certificate (certificate); and
- (c) regarding the meaning of *territory-funded work*:
 - a. the threshold estimated value of services or works to be classified as *territory-funded work*, being \$200,000; and
 - b. the kind of services or works that are excluded from being classified as *territory-funded work*.

The meaning of territory-funded work is critical to the application of the requirements for procurement introduced by the Amendment Act and the Secure Local Jobs Code (the code).

The Amendment Regulation also makes minor formatting changes to the Regulation to make it easier to navigate.

The authority to make the Amendment Regulation is contained in section 52 of the Procurement Act. Further sections of the Procurement Act specifically provide for regulation to prescribe certain the items listed above.

Regulatory impact statement

A Regulatory Impact Statement has been prepared for the Amendment Regulation and is available on the ACT Legislation Register. The Regulatory Impact Statement also addresses two related legislative instruments, the *Government Procurement (Secure Local Jobs Code) Determination 2018* and *Government Procurement (Secure Local Jobs Code Model Contract Terms) Determination 2018*.

Human rights implications

During the development of this Amendment Regulation due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004* (HRA). Human rights implications are discussed in detail in the Regulatory Impact Statement for the Amendment Regulation and associated legislative instruments.

CLAUSE NOTES

Clause 1 Name of regulation

This clause provides the name of the Amendment Regulation.

Clause 2 Commencement

This clause sets out when the Amendment Regulation commences. Apart from schedule 1, the Amendment Regulation commences on 15 January 2019, the same date as the Amendment Act commences.

Schedule 1 commences the same date that schedule 1 of the Amendment Act commences, which is to be a date fixed by the Minister.

Clause 3 Legislation amended

This clause explains that the Amendment Regulation amends the Regulation.

Clause 4 Part 3 heading

This clause updates the heading for part 3 of the regulation, which is currently 'Miscellaneous', to make it more clear that part 3 relates to requirements for procurement proposals. Part 3 contains two provisions already existing in the Regulation, sections 11 and 12. Some of the provisions that were in the original part 3, are to be included in part 6.

Clause 5 New part 4 etc

This clause inserts new part 4, which inserts sections that provide more details about some of the requirements introduced into the Procurement Act by the Amendment Act related to the Code.

Section 12AC Labour relations, training and workplace equity plan – Act, s 22G(6)(b)

New section 12AC includes requirements for a tenderer's labour relations, training and workplace equity (LRTWE) plan. The requirement for a tenderer to submit a LRTWE plan when responding to a procurement for territory-funded work valued at \$25 000 (or another amount prescribed by regulation) is under section 22G(1)(b) of the Procurement Act. A LRTWE plan relates to a tenderer's, and any subcontractor's, workplaces in relation to workplace standards, diversity and equity.

Requirements for what must be stated in a LRTWE plan under new section 12AC include how a tenderer will: ensure compliance with the code at multiple levels, minimise insecure work arrangements, support the physical and mental health of its employees, and promote and support diversity in its workforce.

Where a plan is submitted for a procurement where there is an existing contractor, a tenderer is also to state whether and how they would support the transmission of the existing contractor's employees to the tenderer. Additional requirements apply for

procurements with an estimated value of \$5 million or more, which relate to training and career development for workers in the ACT and surrounding region. A procurement of this magnitude has the potential to significantly benefit the ACT and surrounding region, and the workers located in it. Given the significant price of the procurement, and the likelihood that more workers will be engaged and/or the procurement will run for a longer time, it is appropriate for additional obligations to be imposed in relation to its LRTWE plan.

New subsection 12AC(2) requires that the LRTWE plan is developed by a tenderer in consultation with their employees. The tenderer is to include a statement that outlines how this consultation took place. Developing the plan in consultation with the employees is intended to benefit all parties involved, as evidence demonstrates that involving employees in change processes is more likely to lead to positive outcomes.

Section 12AD Details for secure local jobs code register

New section 12AD inserts requirements for what information is to be kept in the publically available, searchable register, which is established by section 22N of the Procurement Act. The details required for each certificate include the identifying number, period of validity, the name of the approved auditor that completed the audit report submitted as part of the certificate application, and contact details for the certificate holder (unless the certificate holder is an individual).

A distinction is made in terms of the requirements for the inclusion in the register of contact details for certificate holders that are individuals. This distinction has been made due to privacy considerations, given that the register is publically accessible. As the section does not require contact details of individuals to be included in the Register, the right to privacy is not engaged.

Clause 6 New part 6 heading

This clause inserts ‘Miscellaneous’ as a heading before section 13 into the Regulation, a minor amendment to ensure ease of use of the Regulation.

Schedule 1 Delayed amendment

Schedule 1, with delayed commencement, inserts sections 12AA and 12AB into part 4 of the Regulation.

Clause [1.1] New sections 12AA and 12AB

This clause inserts sections 12AA and 12AB, which both relate to the meaning of *territory-funded work* under section 22F of the Procurement Act.

Under section 12AA, \$200 000 is prescribed as the estimated value for services or works under section 22F(1)(a)(ii). Consequentially, once Schedule 1 of the Amendment Act commences, the term *territory-funded work* is broadened in scope to include services or works for a territory entity that are primarily for labour (other than excluded services or works) that have an estimated value equal to or greater than \$200 000.

Subsection 12AB(1) prescribes the kinds of services that are excluded from being classified as *territory-funded work*, meaning that the new requirements do not apply to procurements for these services. The services are identified by reference to divisions of the ANZSIC. Subsection 12AB(2) explains what the ANZSIC is, and additionally where it can be found.