



Australia-United States Free Trade Agreement Implications for NSW Government Procurement

The Australia-United States Free Trade Agreement commences on 1 January 2005. The Government Procurement Chapter of the Agreement will require the introduction of procurement practices which may differ from current typical agency procurement practices.

Summary:

The Australia-United States Free Trade Agreement is a legally binding bilateral Agreement between the Australian and United States Governments to bring about closer economic integration. The Agreement commences on 1 January 2005. Chapter 15 of the Agreement deals with Government Procurement and sets out non-discriminatory requirements which are to apply to procurement activities of participating governments, which includes the NSW Government.

The Government Procurement Chapter applies to the procurement of goods and services, including construction, above specific monetary thresholds (construction projects above A\$9,396,000 and goods and services above A\$666,000). Certain types of goods and services are exempt (including health and welfare services, education services, motor vehicles). Coverage within NSW is limited primarily to general government sector agencies (Attachment A).

The Chapter requires each participating Government to treat suppliers of goods and services from other participating Government jurisdictions (US State and Federal) the same as domestic suppliers of the goods and services. It incorporates rules and procedures for flexibility, transparency and fairness. Within three years, support for local industry and regional development through existing price preference schemes will cease to apply against relevant US suppliers bidding for applicable NSW Government contracts.

The main Government Procurement Chapter requirements which may differ from current typical agency procurement practices include:

- Time for the submission of tenders shall not be less than 30 calendar days from the date of invitation. This can be reduced to 25 days where the notice of invitation is published in electronic medium.
- Technical specifications generally should not preclude the adoption of relevant international standards.
- Previous work experience with the procuring entity, or in NSW or in Australia, should not be an evaluation requirement.
- In addition to the contract award information to be disclosed under Premier's Memorandum 2000-11, the award information is to include the address of the successful supplier and the procurement method used (ie open, selective or limited tendering). The maximum time for publication of the information is reduced from 90 days to 60 days after award of the contract, by electronic or paper medium.

In the event of a complaint that relates to compliance with the Government Procurement Chapter of the Agreement, agencies are encouraged to address the complaint at the agency level. If the complaint cannot be resolved at the agency level, it may be referred to the Chairperson, State Contracts Control Board for consideration. Agencies are to advise NSW Treasury of the outcome of any complaint.

Chief Executive Officers of affected agencies should ensure their procurement activities and practices accommodate the above requirements. The full requirements of the Government Procurement Chapter are available on the Department of Foreign Affairs and Trade website www.dfat.gov.au.

A whole-of-government 'Tendering Guideline' is currently being developed for inclusion in the NSW Government procurement framework. This Guideline will be available on the NSW Treasury website in early 2005 and will incorporate the requirements of the Government Procurement Chapter. State Contracts Control Board contracts and the Agency Accreditation Scheme default construction procurement system will similarly incorporate the Government Procurement Chapter requirements. Compliance with these guidelines, contracts and systems will result in compliance with the Procurement Chapter.

Agencies requiring further information on aspects of the Government Procurement Chapter can contact the Department of Commerce helpdesk on phone 9372 8600.

Kevin Cosgriff
A/Secretary

Further Information: Stephen Chong, Principal Advisor, Asset Management and Procurement, Phone: 9228 4417
NSW Treasury Internet : www.treasury.nsw.gov.au

Attachment A

NSW Government Agencies (as included in the final text of the Agreement) covered by the Government Procurement Chapter of the Australia – United States Free Trade Agreement

Agriculture and Fisheries Portfolio

Department of Agriculture

New South Wales Fisheries

Rural Assistance Authority

Safe Food Production

Attorney General and Environment Portfolio

Attorney General's Department

Department of Environment and Conservation

Legal Aid Commission

Office of the Director of Public Prosecutions

Public Trust Office

Commerce and Industrial Relations Portfolio

Department of Commerce

Motor Accidents Authority

Motor Vehicle Repair Industry Authority

WorkCover NSW

Community Services, Ageing, Disability Services, and Youth Portfolio

Commission for Children and Young People

Department of Ageing, Disability and Home Care

Department of Community Services

Office of the Children's Guardian

Education and Training and Aboriginal Affairs Portfolio

Aboriginal Housing Office

Department of Aboriginal Affairs

Department of Education and Training

Office of the Board of Studies

Energy and Utilities, Science and Medical Research, and Cancer Portfolio

Ministry for Science and Medical Research

Ministry of Energy, Utilities and Sustainability

Gaming and Racing Portfolio

Department of Gaming and Racing

Health Portfolio

Department of Health

Health Care Complaints Commission

Infrastructure and Planning and Natural Resources Portfolio

Department of Infrastructure, Planning and Natural Resources
Sydney Harbour Foreshore Authority

Justice Portfolio

Department of Corrective Services

Juvenile Justice and Planning Administration Portfolio

Department of Juvenile Justice
Heritage Office

Mineral Resources Portfolio

Department of Mineral Resources

Police Portfolio

Ministry for Police
New South Wales Crime Commission
Police Integrity Commission

Premier, Arts, and Citizenship Portfolio

Community Relations Commission
Ministry for the Arts
Ombudsman's Office
Parliamentary Counsel's Office
Premier's Department
State Electoral Office
The Audit Office of New South Wales
The Cabinet Office

Regional Development and Small Business Portfolio

Department of State and Regional Development

Rural Affairs, Local Government, Emergency Services, and Lands Portfolio

Department of Lands
Department of Local Government
Department of Rural Fire Service
New South Wales Fire Brigades
State Emergency Service

Tourism and Sport and Recreation and Women Portfolio

Department for Women
Department of Tourism, Sport and Recreation

Transport Services and Forests Portfolio

Ministry of Transport
State Forests, Forestry Commission

Treasurer and State Development Portfolio

Sydney Olympic Park Authority
NSW Treasury