FACT SHEET

International obligations

The South Australian Government is a signatory to, or has agreed to comply with, Australia's bilateral free trade agreements and with the World Trade Organisation Government Procurement Agreement.

These Agreements aim to reduce barriers to trade, maximise market access for Australian exporters and investors which impose various obligations on governments when conducting procurements.

Public authorities subject to international obligations

The principles for determining which public authorities must comply with (are covered by) international agreements were prepared by the Crown Solicitor's Office in consultation with the Department of Treasury and Finance.

The list of procuring entities in each Agreement is managed by the Department of Foreign Affairs and Trade, and from time to time listed entities may not reflect the current structure of the SA Government (e.g. machinery of government changes).

The purpose of this advice is to set out whether an SA Government agency is a "procuring entity" where the agency is not specifically listed as one under the Agreement.

Principles

1. A department named in the GP Chapter of an Agreement, and all business units that are part of it, are covered.
2. If a department is named in the GP Chapter of an Agreement but not all business units are named, the entire department and all business units are covered.
3. A named statutory authority which continues under another name will still be a covered entity once its name changes.
4. A newly created department or statutory authority is not a procuring entity unless it absorbs some or all of the functions of a named entity.
5. If functions of a named department or statutory authority are transferred to another that is not named in the GP Chapter of an Agreement, then the second department or statutory authority will be treated as a procuring entity.
6. If a non-named entity undertakes a procurement, the procurement is not a covered procurement.

Responsibility for public authority compliance

Chief executives (or equivalent) of a procuring entity are responsible for compliance with obligations set out in Agreements.

Procurement officers are responsible for ensuring they understand applicable obligations by reading each Agreement.

Suppliers are required to resolve any complaints about procurements which are subject to International Agreements with the relevant procuring entity before they are permitted to seek resolution by an impartial administrative or judicial authority.

What are the international obligations?

The SA Government is a signatory to the following Agreement:

- Australia and New Zealand Government Procurement Agreement (ANZGPA)

The SA Government has agreed to comply with the Government Procurement Chapters (GP Chapters) of the following International Agreements to which the Australian Government is a signatory:

- Australia-United States Free Trade Agreement (AUSFTA)
- Australia-Chile FTA (ACIFTA)
- Korea-Australia FTA (KAFTA)
- Japan-Australia Economic Partnership Agreement (JAEPA)
- Singapore-Australia FTA (SAFTA)
- Peru-Australia FTA (PAFTA)
- Australia-Hong Kong FTA (A-HFTA)
- Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)
- Australia-United Kingdom FTA (A-UKFTA)

Australia and New Zealand Government Procurement Agreement (ANZGPA)

Objectives and application

The objective of the ANZGPA is to maximise opportunities, and reduce the costs of doing business, for Australian and New Zealand government and suppliers. It applies to all government procurements, including construction (as defined by the ANZGPA), and is applicable to all departments, statutory authorities, and other bodies controlled by the SA Government.

Public authorities are responsible for achieving the ANZGPA's objectives by:

- ensuring opportunities exist for Australian and New Zealand suppliers to compete on an equal and transparent basis for government contracts
- ensuring interstate and trans-Tasman preference schemes and other forms of discrimination based on place are not applied to government procurement
- providing a mechanism to collaboratively work toward consistent contractual, technical, and performance standards and specifications, and simplicity and consistency in procurement policies, practices, and procedures
- ensuring electronic commerce methods in procurement are consistent with the ANZGPA.

Procurement thresholds

There are no procurement thresholds for ANZGPA

Exceptions

Annex 1 of the ANZGPA outlines classes of procurement which are exempt from some of its requirements.

Government Procurement Chapters of FTAs and the WTOGPA

Objectives

The FTAs and WTOGPA are designed to maximise and improve market access, legal protections, and business certainties that Australian exporters and investors require to compete in signatories' economies. The primary principle of the GP Chapters of the FTAs and the WTOGPA is that each party will treat suppliers from other party countries no less favourably, and present no more barriers to them, than their domestic suppliers in the conduct of government procurement.

The GP Chapters of the FTAs and WTOGPA apply to government 'covered procurements' of goods, services, or construction:

- through any contractual means including purchase, rental or lease with or without an option to buy, build-operate transfer contracts, and public works concessions contracts
- for which the value equals or exceeds the relevant threshold specified in the GP Chapter
- that are not excluded from coverage.

Procurement thresholds

The Government procurement requirements of the FTAs and WTOGPA apply to covered procurements undertaken by 'procuring entities' where the value of the procurement (including GST) exceeds the following monetary thresholds:

FTA or GPA	Goods and Services Threshold	Construction Services Threshold
AUSFTA	AUD728,000	AUD10,252,000
All other FTAs and GPAs	AUD727,000	AUD10,243,000

Valuing a procurement

The estimated value of a procurement will include the total value of any extension or other options, in determining if it is a 'covered procurement'.

Exceptions

Procuring entities must refer to the specific Agreements to obtain details of exceptions. Public authorities may wish to seek specific legal advice as to whether any exception applies to a proposed procurement.

Advertising tender documents

In accordance with the GP Chapters of the FTAs and WTOGPA, prospective suppliers in signatory and party nations must be able to access tender advertisements and opportunities which must be published in widely disseminated electronic or paper media. These must remain readily accessible to the public for the entire period for responding to the tender.

To meet this requirement, the Sourcing Policy requires all open market approaches valued above $550,000 to be advertised on the SA Tenders and Contracts website.

Government Procurement Chapters of FTAs and the WTOGPA (continued)

Awarding of contracts

Unless it is not in the public interest, a contract should be awarded to the offer representing the best value for money.

Each public authority is required to advise suppliers that submitted an offer for a covered procurement, in writing, the outcome of their offer and provide an opportunity to receive feedback, including a formal tender debrief as requested. Tender debriefs should provide constructive feedback to suppliers.

Late tenders

A public authority should not penalise submissions received after the closing date if the fault lies with the public authority. Refer to the Sourcing Policy for details on handling late tenders.

Non-discrimination

An offer to a tender call received from a participating FTA, TPP, or WTOGPA signatory supplier must not be treated less favourably than an offer from an Australian supplier.

Offsets

The imposition or enforcement of offsets (as defined in the Agreements) is prohibited under the FTAs and WTOGPA.

Market approach (Sourcing)

Covered procurement market approaches should adhere to the requirements detailed in the Procurement Planning Policy.

The default procurement method under the Agreements is open tendering. In certain circumstances as specified in each Agreement, limited or selective tendering may be used.

Prequalification lists

The FTAs and WTOGPA allow public authorities to establish prequalification lists to identify suppliers that meet criteria for future procurements of specified categories of goods, services, or construction.

Invitations to prequalification lists should be issued to the open market, non-discriminatory, and published continuously on SA Tenders and Contracts.

For the purposes of the FTAs and WTOGPA, a panel contract is not considered a prequalification list.

Tender call periods

Each Agreement has a minimum default period between tender advertising and closure:

Agreement	Minimum tender period
AUSFTA, ACIFTA, KAFTA, JAEPA, A-UKFTA, PAFTA, A-HKFTA	30 calendar days
SAFTA, WTOGPA, CPTPP	40 days 25 days for selective tendering

For all FTAs, this period can be reduced to 25 days if:

- the tender is advertised on SA Tenders and Contracts
- the tender documentation is made available electronically from the date of advertisement of the tender
- tender responses can be submitted electronically.

Breaches

Each GP Chapter of the FTAs and WTOGPA includes domestic review relating to their breach.

Public authorities should manage complaints in line with their internal framework and the Supplier Complaints Schedule. Where required, public authorities should seek legal advice.