

Procurement rules

Version 1.7

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Acronyms	Full form
NT	Northern Territory
NTG	Northern Territory Government

¹ The date the Rules came into effect

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1. Introduction

This document describes the Procurement Rules outlining the mandatory requirements, exemptions, exceptions and process options for all Northern Territory Government (NTG) agencies and their personnel when undertaking procurement activities.

Section 11.1 of the *Procurement Act 1995* provides for the Minister responsible for Procurement to 'issue directions with respect to the principles, practices and procedures to be observed in the procurement of supplies by and on behalf of the Territory and Agencies'. The Minister responsible for Procurement has issued two documents that form these directions:

1. *Procurement Governance Policy*
2. *Procurement Rules* (this document)

The *Procurement Governance Policy* describes the Procurement Framework which includes the Procurement Principles, Procurement Lifecycle approach, Procurement Governance Model and definitions that governs and guides NTG procurement activities.

In addition to the directions issued by the Minister responsible for Procurement, Procurement Circulars are issued from time to time by the Agency responsible for procurement policy, providing further guidance to be observed by agencies.

The Rules should be read in conjunction with the *Procurement Governance Policy* and current Procurement Circulars to ensure agencies are compliant in the conduct of their procurement activities.

2. Components of the Procurement Rules

The Rules consists of four components:

1. **Procurement Principles** (Section 3) – these are the core values that guide the interpretation and implementation of the Rules to achieve the desired outcomes, irrespective of the value and risk.
2. **Procurement Lifecycle** (Section 4) – outlines the key stages of the procurement process, providing a context for the Rules.
3. **Procurement Rules** (Section 5) – these describe the mandatory requirements that agencies must (should by exception) follow when undertaking procurement activities.
4. **Procurement Rules Exceptions and Exemptions** (Section 6) – provides limited exceptions and exemptions from specific rule requirements that may be approved where their use is defensible.

Definitions of terms used within the Rules can be found in the *Procurement Governance Policy*.

3. Procurement Principles

The five Procurement Principles that must be applied to every procurement activity, irrespective of value and risk, are summarised below.

For further information about behaviours associated with each principle, refer to the *Procurement Governance Policy*.

Principle	Objective
1. VALUE FOR TERRITORY	Procurement expenditure that delivers procurement outcomes while meeting the NTG economic, social, environmental and cultural objectives.
2. ETHICAL BEHAVIOUR AND FAIR DEALING	Procurement activities instil confidence in business, industry and the public as to the probity, accountability and efficacy of NTG Procurement Framework.
3. OPEN AND EFFECTIVE COMPETITION	Procurement activities foster a competitive and innovative business environment to drive opportunities for the NT.
4. ENHANCING THE CAPABILITIES OF TERRITORY ENTERPRISES AND INDUSTRIES	Procurement activities support the growth, development, and sustainability of Territory enterprises and industries.
5. ENVIRONMENTAL PROTECTION	Procurement activities promote the protection of the environment through harm minimisation and sustainable practices.

4. Procurement Lifecycle

The Procurement Lifecycle has three stages and accompanying activities as shown in Figure 1 below:

- **Planning** – agency strategic procurement planning, defining specific procurement needs and planning specific procurement approaches.
- **Sourcing** – the process of inviting businesses and industry to submit offers, and the steps associated with assessing, negotiating and awarding contracts.
- **Contract Management** – systematically and effectively managing contract establishment, execution and closure, including a review of contractor performance and the recording of lessons learnt.

For further information about the activities at each stage of the Procurement Lifecycle, refer to the *Procurement Governance Policy*.

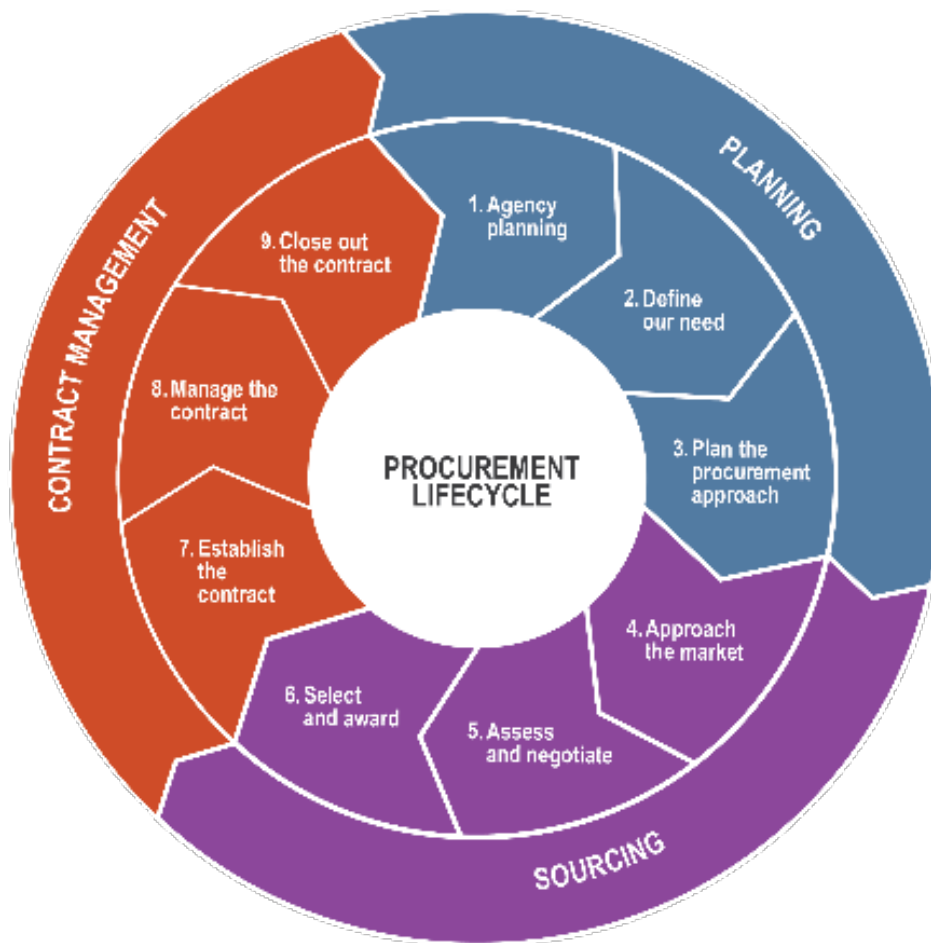


Figure 1. Procurement Lifecycle

5. Procurement Rules

Procurement Rules are requirements for agencies and their personnel when undertaking procurement activities. Although compliance with the Procurement Rules is compulsory, the Rules allow discretion in many instances, providing a level of flexibility that is essential across the diverse range of business needs of NTG agencies.

Where the Rules use the term '**must**', the Rule is mandatory and non-compliance is a breach.

Where the Rules use the term '**should**', this indicates that careful consideration of factors relevant to each activity is required.

Agencies **must** observe the role and responsibilities of the following authorities to ensure compliance with the Procurement Rules:

- Where the Rules use the term '**Accountable Officer**', the approval of that action rests solely with the person fulfilling the role or duties of the Chief Executive (or equivalent) and cannot be further delegated.
- Where the rules use the term '**Delegate**', that action may be approved by the Accountable Officer or an authorised delegate of the Accountable Officer.

Procurement Rules are structured to align with the three stages of the Procurement Lifecycle, with the addition of General Rules and a Supplementary Rule Detail Table.

The Procurement Rules **must** be read in conjunction with the *Procurement Governance Policy* and current Procurement Circulars to ensure agencies are compliant in the conduct of their procurement activities.

5.1. General Rules

Rule 1. Governance and Accountability

- 1.1 Procurement Circulars may be issued by the Agency responsible for procurement policy from time to time, and these **must** be complied with by NTG agencies.
- 1.2 The **Accountable Officer should** establish procurement delegations for their agency that considers appropriate segregation of duties.
- 1.3 The **Accountable Officer** may establish additional procurement processes and procedures for their agency provided they are consistent with the requirements of the *Procurement Act*.
- 1.4 Personnel **must** ensure they are operating within the agency's procurement procedures.
- 1.5 The agency and its personnel **must** ensure that all procurement recommendations, decisions and actions are defensible and documented.
- 1.6 The **Accountable Officer must** establish an internal audit program for their agency that incorporates the requirements of the Value for Territory Assurance Program.
- 1.7 If requested by the agency responsible for procurement policy or the Buy Local Industry Advocate, the **Accountable Officer must** provide full details of requested procurement activities.

'Defensible' means:

Defensible means based on proper consideration of the situation and information available at the time (including information that is reasonable to obtain), free from real or perceived bias, and procedurally fair.

'Probity' means:

Probity aims to maintain the integrity of the public sector by adopting and following well-considered procedures and processes to ensure that procurement decisions are fair, transparent and defensible.

Rule 2. Local Content and Aboriginal Participation

- 2.1 The agency **must** consider opportunities to maximise local content throughout the Procurement Lifecycle.
- 2.2 The agency **must** consider opportunities to maximise Aboriginal participation and employment throughout the Procurement Lifecycle.

Rule 3. Conflict of Interest

- 3.1 All personnel involved in a procurement activity **must** declare any actual interest and any actual, potential or perceived conflict of interest to the **Delegate**.
- 3.2 If a declaration is made, the **Delegate must** determine any actions arising from identified conflicts with due regard to probity.

Rule 4. Complaints

- 4.1 The **Accountable Officer must** have a procurement complaints management procedure for their agency.
- 4.2 All procurement complaints **must** be investigated.
- 4.3 Subject to Rule 4.4, all procurement complaints **must** be reported to the agency responsible for procurement policy within 1 week of being received.

- 4.4 A procurement complaint, or part thereof, **should** not be reported to the agency responsible for procurement policy where:
- the complainant has specifically stipulated that a detail of the complaint is not to be referred to any other parties; or
 - it contains specific allegations of criminal activity, breaches of the PSEMA Code of Conduct or anti-competitive trade practices where the further distribution or referral of information may unfairly prejudice the subject of the complaint or breach NT or Commonwealth legislation.
- 4.5 Where only minor elements of a procurement complaint satisfies the above reporting exclusions, the remaining elements **should** be treated as a reportable procurement complaint.
- 4.6 The agency **should** manage complaints made about its procurement activities.
- 4.7 A procurement complaint relating to the NT Government implementation of or adherence with the Buy Local Plan, including an agency's assessment or measurement of Local Content, **must** be referred to the Buy Local Industry Advocate through the agency responsible for procurement policy.
- 4.8 A procurement complaint that meets the mandatory requirements under the *Independent Commissioner Against Corruption Act 2017* **must** be referred to the Independent Commissioner Against Corruption.
- 4.9 Complaints received by an agency regarding procurement policy or the Procurement Review Board **must** be referred to and managed by the agency responsible for procurement policy.
- 4.10 All procurement complaint outcomes and resolutions **must** be reported to the agency responsible for procurement policy within 1 week.
- 4.11 The agency **must** ensure that the receipt or investigation of a procurement complaint does not prejudice a complainant's ongoing or future participation in procurement and contract activities.

Rule 5. Maintaining Records

- 5.1 The agency **must** maintain appropriate records of procurement activities in accordance with NTG records management standards and guidelines for a period of at least three years after contract award.
- 5.2 The records **must** document the procurement decisions, the contract award and include all recommendations, and reports; including contract management plans and contractor performance reports where applicable.

Rule 6. Procurement Information Systems

- 6.1 The agency **must** use the Agency Purchase Requisitions Online system, including associated systems and services provided by Contract and Procurement Services, for all procurement activity over \$15 000 (refer Section 5.5).
- 6.2 Where specified as a requirement in Section 5.5, the agency **must** record the management of procurement contracts in a contract management system approved by the agency responsible for procurement policy.

Rule 7. Exceptions and Exemptions

- 7.1 The **Accountable Officer** and **Delegate** **must** only approve the use of exceptions or exemptions in accordance with Section 6 – Procurement Exceptions and Exemptions.
- 7.2 Exceptions and exemptions apply only to the specific requirements approved; agencies **must** comply with all other requirements of the Rules.

5.2. Planning Rules

Rule 8. Agency Planning

- 8.1 The agency **must** develop an Agency Procurement Management Plan, to be approved by the **Accountable Officer** annually.
- 8.2 The Agency Procurement Management Plan **must** be submitted to the Procurement Review Board by 1 August each year.
- 8.3 As part of their Agency Procurement Management Plan, the agency **must** include the following details:
 - i. significant procurement activity planned for the next five years. The next 12 months **must** include details of the purpose, region, estimated release date, proposed procurement method and estimated value of each procurement activity
 - ii. consideration of ways to maximise local content and Aboriginal participation when undertaking procurement activities
 - iii. industry engagement strategies, including consideration of opportunities to provide industry briefings
 - iv. reporting on performance against planned procurement activities, including significant departures from the Agency Procurement Management Plan of previous years
 - v. reporting on procurement related complaints for the preceding 12 months
 - vi. internal audit and assurance programs
 - vii. procurement related training, organisational learning and development.

Rule 9. Project Specific Procurement Planning

- 9.1 **Delegate** approval **should** be obtained before commencing project specific procurement planning.
- 9.2 Prior to commencing project specific sourcing activities, the agency **must** undertake appropriate planning, including:
 - i. clearly defining the scope
 - ii. estimating the value of the procurement, inclusive of all applicable taxes
 - iii. setting appropriate assessment criteria.
- 9.3 The total estimated value, inclusive of applicable taxes and all extension options **must** be used when determining the minimum procurement tier.
- 9.4 The agency **must** consider the value and risk of a procurement activity when determining the level of planning required.
- 9.5 Where specified as a requirement in Section 5.5, the **Delegate must** approve a Project Specific Procurement Plan, which **must** include:
 - i. capability and capacity of local industry and businesses to meet supply requirements
 - ii. consideration of opportunities to maximise local content
 - iii. consideration of opportunities to maximise Aboriginal participation
 - iv. identifying the appropriate procurement method to be used in consideration of the value and risk
 - v. identifying assessment criteria and associated weightings
 - vi. negotiation protocol or plan where negotiations are anticipated or planned.
- 9.6 Where specified as a requirement in Section 5.5, the agency **must** ensure the local content assessment criteria are designed to elicit local benefit commitments from respondents.
- 9.7 The agency **must** not divide or design a procurement activity into separate phases or parts to artificially reduce the total estimated value for the purpose of reducing the procedural requirements of a procurement activity.
- 9.8 The **Delegate must** provide approval before commencing sourcing activities.

Rule 10. Future Tender Opportunities

- 10.1 Where specified as a requirement in Section 5.5, the agency **must** advertise a future tender opportunity between 40 calendar days and 12 months prior to the release of the request for offer.

Rule 11. Assessment Criteria and Weightings

- 11.1 Assessment criteria weighting **must** include:
- i. a minimum 30% weighting for local content
 - ii. up to a maximum 30% weighting for price.

Rule 12. Procurement Method

- 12.1 The agency **should** use an open and competitive approach, to give businesses equal opportunity to participate in a procurement activity (refer Section 5.5).
- 12.2 Where supplies are available under an existing agency contract or across government contract, the supplies **must** be obtained under that contract unless otherwise provided for in the contract.
- 12.3 Where supplies are available under an existing period contract with the Australian Government, a state or another territory, the agency **must** obtain approval from the Procurement Review Board, the **Delegates** of both agencies and subsequently the supplier prior to obtaining supplies in accordance with the existing contract.
- 12.4 Where supplies are available under an existing period contract of another agency, the agency **must** obtain approval from the **Delegates** of both agencies and subsequently the supplier prior to obtaining supplies in accordance with the existing contract.
- 12.5 The agency **must** use a preferred procurement method (refer Section 5.5) unless otherwise approved by the **Delegate** (refer Section 6).

Rule 13. Territory Enterprise

- 13.1 The agency **must** ensure that at least one Territory enterprise is invited to provide an offer for Tier 1 supplies (refer Section 5.5).
- 13.2 The agency **must** ensure that at least two Territory enterprises are invited to provide an offer for Tier 2 supplies (refer Section 5.5).
- 13.3 The agency **should** design procurement activities to maximise the ability of Territory enterprises to participate.

Rule 14. Contractor Accreditation Limited

- 14.1 Where specified as a requirement in Section 5.5, the agency **must** use the prequalification assessment provided by Contractor Accreditation Limited where there is an applicable category and group.
- 14.2 In the case of period contracts, the agency **must** ensure the financial threshold for mandatory Contractor Accreditation Limited accreditation is based on the annual estimated value of the supplies.

Rule 15. Industry Capability Network NT

- 15.1 The agency **must** consult Industry Capability Network NT to identify potential Territory enterprises prior to inviting offers from outside of the NT for Tier 1 and Tier 2 procurement activities (refer Section 5.5).

5.3. Sourcing Rules

Rule 16. Procurement Documentation

- 16.1 The agency **should** use standard conditions of offer and conditions of contract in the request for offer.
- 16.2 Where the agency determines that the standard conditions of offer or conditions of contract are inappropriate or insufficient for a specific procurement activity, approval **must** be obtained from the agency responsible for procurement policy to use alternative or additional clauses.
- 16.3 The agency **should** allow alternative offers and changes to conditions of contract.
- 16.4 Where specified as a requirement in Section 5.5, the assessment criteria and percentage weightings **must** be included in the request for offer.
- 16.5 The agency **must** require Industry Participation Plans for procurement activities with an individual contract value estimated to be greater than \$5 million.

Rule 17. Advertising

- 17.1 The agency **must** ensure the release and closure of request for offers as specified in Section 5.5.
- 17.2 The agency **must** ensure respondents are provided with at least the minimum advertising period to respond to a request for offer as specified in Section 5.5.
- 17.3 The agency **must** ensure it has appropriate processes and procedures in place to respond to queries during and after the advertising period.
- 17.4 Changes to assessment criteria weightings during the advertising period **must** be approved by the **Accountable Officer**.
- 17.5 The agency **should** issue addenda to address significant issues identified during the advertising period. Addenda **must** only be issued with the approval of the **Delegate**.

Rule 18. Admissibility

- 18.1 The **Delegate must** determine the admissibility of all offers that do not comply with the requirements of the conditions of offer.
- 18.2 Offers that do not comply with the mandatory requirements of the conditions of offer **must** be deemed inadmissible by the **Delegate**.
- 18.3 Where specified as a requirement in Section 5.5, respondents **must** be provided an appeal right to the Procurement Review Board if their offer is deemed inadmissible.
- 18.4 Respondents **must** be advised if their offer is deemed inadmissible, including appeal rights.
- 18.5 Offers received that are deemed inadmissible **must** not be assessed unless the Procurement Review Board approves their admissibility.

Rule 19. Assessment of Offers

- 19.1 Assessments **must** be undertaken by personnel with relevant skills and knowledge appropriate to the value and risk of the procurement activity.
- 19.2 The agency **must** ensure an appropriate membership size for the assessment panel as specified in Section 5.5.
- 19.3 The agency **must** not shortlist responses based on price only.
- 19.4 The assessment **must** be conducted on the approved assessment criteria and weightings.
- 19.5 All admissible offers **must** be assessed against the assessment criteria using a consistent scoring scale.
- 19.6 To the extent an alternative offer is comparable, the assessment **must** be on the same basis as other offers, and as allowed in the request for offer.

- 19.7 The assessment **should** identify, assess and document any risks in the offers.
- 19.8 At the end of the assessment, offers **must** be ranked from highest to lowest (based on total scores).
- 19.9 Procurement assessment outcomes, including declining all offers, **must** be approved by the **Delegate**.
- 19.10 Higher ranked offers **must** be accepted in preference to lower ranked offers unless approved otherwise by the **Accountable Officer**.

Rule 20. Offer Validity Period

- 20.1 The offer validity period **must** be managed in accordance with the conditions of offer used.

Rule 21. Clarifications and Verification

- 21.1 The agency **must** undertake reasonable due diligence, commensurate with the nature of the claims made and level of risk, to verify claims made by respondents.
- 21.2 Where an offer contains information that is open to interpretation or is not readily understood, clarification **should** be obtained from the respondent.
- 21.3 Where an offer contains an obvious typographical error that will impact the outcome of the assessment, clarification **must** be obtained from the respondent.
- 21.4 Obvious typographical errors **must** only be corrected with written confirmation from the respondent and approval from the **Delegate**.
- 21.5 All clarifications **must** be framed in a manner that does not result in the respondent gaining an unfair advantage over other respondents.
- 21.6 Any discussion or contact with the respondent during the assessment process **must** be done with due regard to probity.
- 21.7 Clarifications that introduce new material or substantially change an offer, beyond correcting an obvious typographical error, **must** be treated as a negotiation.

Rule 22. Negotiations

- 22.1 Approval **must** be obtained from the **Delegate** to conduct non-price negotiations.
- 22.2 Approval **must** be obtained from the **Accountable Officer** to conduct price negotiations.
- 22.3 The negotiation process **must** be clearly communicated to relevant respondents, conducted in a manner that is fair and equitable, and documented.

Rule 23. Contract Award and Notification of Outcome

- 23.1 Where specified as a requirement in Section 5.5, respondents **must** be notified of the outcome of the assessment in writing.

Rule 24. Contract Disclosure

- 24.1 Where specified as a requirement in Section 5.5, details of contracts awarded **must** be published on the NTG website unless otherwise approved by the Minister responsible for Procurement.

Rule 25. Debriefing Respondents

- 25.1 The agency **must** provide all respondents the opportunity to be debriefed following a sourcing activity.
- 25.2 Debriefings **must** not disclose information that could compromise the commercial confidentiality (excluding contract award price) of other offers.

- 25.3 The agency **must** provide information at the debrief that assists respondents to identify opportunities to improve future offers.
- 25.4 A record of the debrief **must** be prepared by the agency and be made available to the respondent.

5.4. Contract Management Rules

Rule 26. Contract Management Planning

- 26.1 Where specified as a requirement in Section 5.5, the agency **must** develop Contract Management Plans commensurate with the value and risk of a contract.
- 26.2 The agency **may** evidence a contract management plan through the establishment of a contract record in an approved contract management system provided it includes:
 - iii. project description and identification number
 - iv. contractor details
 - v. contract roles i.e. contract manager
 - vi. contract objectives, scope, key deliverables
 - vii. contract commencement, term and extension options, review or key dates
 - viii. estimated value, pricing and payment terms
 - ix. meeting requirements and schedule
 - x. key performance indicators and deliverables
 - xi. variations and amendments
 - xii. performance reporting
- 26.3 The agency **must** ensure it has systems, processes and resources assigned to adequately manage the agency's contracts.
- 26.4 The agency **must** ensure that personnel who have a role in contract management have the necessary skills and training.

Rule 27. Industry Participation Plan

- 27.1 Industry Participation Plans **must** be established for individual contracts with an estimated value of \$5 million or greater.
- 27.2 The agency **must** monitor the contractor's performance against the Industry Participation Plan.

Rule 28. Performance Reporting

- 28.1 Where specified as a requirement in Section 5.5, the agency **must** complete contractor performance reports commensurate to the value and risk of a specific contract.
- 28.2 The agency **must** report on the contractor's performance against local benefit commitments.
- 28.3 The contractor **must** be provided with performance feedback and given the opportunity to respond.
- 28.4 The agency **must** retain performance reports commensurate to the value and risk of the contract and on request, provide a copy of the performance reports to other agencies to assist in assessments.
- 28.5 Where contractor accreditation applies, the agency **must** provide Contractor Accreditation Limited with performance reports every 12 months and at the completion of each contract.

Rule 29. Contract Variations

- 29.1 Contract variations **must** only be made with the approval of the **Delegate**.
- 29.2 Contract variations **should** only be made where the variations do not change the scope of the original contract.

5.5. Supplementary Rule Detail Table

The following table provides additional detail regarding the Procurement Rules agencies **must** adhere to when undertaking procurement activities. Where optional is specified, agencies may consider applying the requirement based on the profile of the procurement. For further information and terminology, please refer to the *Procurement Governance Policy*.

Procurement Rule	Rule Number	Preferred and Alternative Procurement Methods							Restricted Procurement Methods	Emergency Procurement Methods
		Tier 1	Tier 2	Tier 3	Tier 4	Tier 5	Existing Period Contract	Partnership Agreement	Direct Contracting	Emergency Exemption
	Value (including GST)	Less than \$15 000	\$15 000 - <\$100 000	\$100 000 - <\$500 000	\$500 000 - <\$5 000 000	Greater than \$5 000 000	Any Value	Any Value	Any Value	Any Value
Agency Purchase Requisitions Online System (APRO)	6.1	Optional	Yes	Yes	Yes	Yes	Optional	Yes	Yes, if greater than \$15 000	Yes, if greater than \$15 000
Contract Management System	6.2	Agency Discretion	Agency Discretion	Yes	Yes	Yes	Agency Discretion	Yes, if greater than \$100 000	Yes, if greater than \$100 000	Yes, if greater than \$100 000
Planning Rules										
Project Specific Procurement Plan	9.5	Optional	Optional	Mandatory	Mandatory	Mandatory	Optional	Optional	Mandatory	N/A
Local Benefit Commitment	9.6	Optional	Optional	Mandatory	Mandatory	Mandatory	In accordance with the contract	In accordance with the agreement	Yes, if greater than \$100 000	N/A
Future Tender Opportunities (FTO)	10.1	Optional	Optional	Optional	Mandatory	Mandatory	N/A	Optional	Optional	N/A
Preferred Procurement Method	12.1	Quotation (minimum 1)	Quotation (minimum 3)	Public Tender	Public Tender	Public Tender	In accordance with the contract	In accordance with the agreement	N/A	N/A

Procurement Rule	Rule Number	Preferred and Alternative Procurement Methods							Restricted Procurement Methods	Emergency Procurement Methods
		Tier 1	Tier 2	Tier 3	Tier 4	Tier 5	Existing Period Contract	Partnership Agreement	Direct Contracting	Emergency Exemption
	Value (including GST)	Less than \$15 000	\$15 000 - <\$100 000	\$100 000 - <\$500 000	\$500 000 - <\$5 000 000	Greater than \$5 000 000	Any Value	Any Value	Any Value	Any Value
Alternative Procurement Method	12.5 Exemption 6.2	Direct Purchasing	Quotation (fewer than 3) Direct Purchasing	Select Tender	Select Tender	Select Tender	N/A	N/A	N/A	N/A
Territory Enterprise	13	Yes	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Contractor Accreditation Limited	14.1	No	No	Yes	Yes	Yes	In accordance with the contract	No	Yes, if greater than \$100 000	No
Industry Capability Network NT Consultation	15.1	Yes	Yes	Optional	Optional	Optional	No	No	Yes, if less than \$100 000	No
Sourcing Rules										
Assessment criteria weighting disclosed	16.4	Agency discretion	Agency discretion	Yes	Yes	Yes	In accordance with the contract	Yes	N/A	N/A
Responsibility for releasing and closing Request for Offers	17.1	Agency	Agency	Contracts and Procurement Services	Contracts and Procurement Services	Contracts and Procurement Services	In accordance with the contract	In accordance with the agreement	Agency	Agency
Advertising Period with FTO	10.1 and 17.2	N/A	N/A	N/A	2 weeks	2 weeks	In accordance with the contract	In accordance with the agreement	N/A	Agency discretion

Procurement rules

Procurement Rule	Rule Number	Preferred and Alternative Procurement Methods							Restricted Procurement Methods	Emergency Procurement Methods
		Tier 1	Tier 2	Tier 3	Tier 4	Tier 5	Existing Period Contract	Partnership Agreement	Direct Contracting	Emergency Exemption
	Value (including GST)	Less than \$15 000	\$15 000 - <\$100 000	\$100 000 - <\$500 000	\$500 000 - <\$5 000 000	Greater than \$5 000 000	Any Value	Any Value	Any Value	Any Value
Advertising Period without FTO	10.1 and 17.2	Agency discretion	2 business days	4 business days	4 weeks	4 weeks	In accordance with the contract	In accordance with the agreement	N/A	Agency discretion
Advertising Period with Exception	Exception 6.1.5	Agency discretion	Agency discretion	2 business days	10 calendar days	10 calendar days	In accordance with the contract	In accordance with the agreement	N/A	Agency discretion
Admissibility Appeal Right to the Procurement Review Board	18.3	No	No	Yes	Yes	Yes	In accordance with the contract	In accordance with the agreement	N/A	No
Minimum Assessment Panel size	19.2	1	2	3	3	3	In accordance with the contract	In accordance with the agreement	2	Agency discretion
Notification of Outcome	23.1	If requested	Yes	Yes	Yes	Yes	Yes	Yes	Yes	If requested
Contract Disclosure	24.1	No	Yes	Yes	Yes	Yes	N/A	Yes, if greater than \$15 000	Yes, if greater than \$15 000	Yes, if greater than \$15 000
Contract Management Rules										
Management Plan	26.1	Agency discretion	Agency discretion	Yes	Yes	Yes	In accordance with the contract	Yes, if greater than \$100 000	Yes	Yes, if greater than \$100 000
Performance Reporting	28.1	Agency discretion	Agency discretion	Yes	Yes	Yes	In accordance with the contract	Yes, if greater than \$100 000	Yes, if greater than \$100 000	Yes, if greater than \$100 000

6. Procurement Rules Exceptions and Exemptions

6.1. Procurement Exceptions

- a) Procurement exceptions are established to provide flexibility to the agency where it is impractical or impossible to comply with specific requirements of the Rules.

6.1.1. E1 Territory Enterprise

- a) The agency **must** obtain the approval of the **Delegate** to exclude a procurement activity from the requirement to:-
 - i. for a Tier 1 supply, invite an offer from at least one Territory enterprise, where the agency determines that there are no Territory enterprises capable of providing the supplies; or
 - ii. for a Tier 2 supply, invite an offer from at least two Territory enterprises, where the agency determines that there is only a single Territory enterprise or there are no Territory enterprises capable of providing the supplies.

6.1.2. E2 Future Tender Opportunities

- a) The agency **must** obtain the approval of the **Delegate** to exclude a procurement activity from the requirement to advertise a future tender opportunity.
- b) The **Delegate** **must** only approve an exception where the procurement activity is to a single, sole supplier.

6.1.3. E3 Contractor Accreditation Limited

- a) The agency **must** obtain the approval of the **Delegate** to exclude a procurement activity from the requirement to use Contractor Accreditation Limited's pre-qualification service.

6.1.4. E4 Industry Participation Plans

- a) The agency **must** obtain the approval of the **Delegate** to exclude a procurement activity from the Industry Participation Plan requirements.

6.1.5. E5 Advertising Period

- a) The agency **must** obtain the approval of the **Delegate** to exclude a procurement activity from the required advertising period (refer Section 5.5).
- b) The **Delegate** may grant an exemption where the agency:
 - i. demonstrates a state of urgency which makes the advertising period impractical; or
 - ii. is procuring commercially available supplies.

6.1.6. E6 Contract Management System

- a) The agency **must** obtain the approval of the **Accountable Officer** to exclude a procurement activity from the requirement to record the management of a contract in an approved contract management system.
- b) The agency **must** provide quarterly reporting to the Procurement Review Board detailing the exceptions approved.

6.2. E6 Agency Issued Certificate of Exemption

Agency issued certificates of exemptions allow the agency to use alternative or restricted procurement methods.

- a) The agency **must** only issue a Certificate of Exemption (authorising the use of an alternative or restricted procurement method):
 - i. where it can be demonstrated that it will result in improved Value for Territory or is in the best interest of government and industry; and
 - ii. with the approval of the **Delegate**.

6.2.1. E6.1 Alternative Procurement Method

- a) For Tier 1 procurement activities, agency **must** only use direct purchasing for goods and services that are low risk, freely available 'off the shelf' and purchased locally.
- b) For Tier 2 and Tier 3 procurement activities agencies:
 - i. **should** only issue certificate of exemptions for reasons detailed in table 6.2; and
 - ii. with respect to Tier 2, **must** only use direct purchasing for goods and services that are low risk, freely available 'off the shelf' and purchased locally.
- c) For Tier 4 and Tier 5 procurement activities agencies **must** only issue certificate of exemptions for reasons detailed in table 6.2.

Table 6.2				
Reason for alternative procurement	Tier 2	Tier 3	Tier 4	Tier 5
Where it is confirmed a limited or sole supply market exists	Yes	Yes	No	No
The works can be performed by a regional council within its council boundary and achieve a minimum 30% Aboriginal employment in the delivery of the contract	Yes	Yes	Yes	Yes
The goods or services are to be delivered in a remote area from a legal entity which has a minimum of 30% of its full-time personnel who are Aboriginal as per exemption 6.3.4 E10 O. Remote Procurements	Yes	Yes	Yes	Yes
In response to a procurement activity where: <ul style="list-style-type: none"> no responses were received, or none of the responses met the essential requirements of the request for offer, or none of the responses satisfied the conditions for participation, or the responses received were collusive, and the agency does not substantially modify the essential requirements of the procurement	Yes	Yes	Yes	Yes

Table 6.2

Reason for alternative procurement	Tier 2	Tier 3	Tier 4	Tier 5
<p>The goods or services can only be provided by a single supplier and there is no reasonable alternative or substitute for one of the following reasons:</p> <ul style="list-style-type: none"> the supply is for works of art, the protection of patents, copyrights, or other exclusive rights, or an absence of competition for technical reasons 	Yes	Yes	Yes	Yes
<p>Additional deliveries of the goods or services by the original supplier or authorised representative of goods or services that were not included in the initial procurement activity, where a change of suppliers for such additional goods or services:</p> <ul style="list-style-type: none"> cannot be made for technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement activity or due to conditions under original supplier warranties; and would cause significant inconvenience or substantial duplication or costs for the procuring agency 	Yes	Yes	Yes	Yes
For goods purchased on a commodity market or exchange	Yes	Yes	Yes	Yes
It is a supply of a prototype or a first good or service that is intended for limited trial or that is developed at the agency's request	Yes	Yes	Yes	Yes
If additional construction services that were not included in the initial procurement but are within the objectives of the procurement become necessary to complete the supply. The total value of the supply for additional construction services must not exceed 50% of value of the initial procurement activity	Yes	Yes	Yes	Yes
Exceptional advantageous conditions exist, that arise only in the very short term (such as from unusual disposals, unsolicited innovation proposals, liquidation, bankruptcy, or receivership)	Yes	Yes	Yes	Yes
The supplier is the winner of a design contest resulting in the supply	Yes	Yes	Yes	Yes
For reasons of extreme urgency brought about by events unforeseen by the agency, the goods or services cannot be obtained in time under the preferred procurement method	Yes	Yes	Yes	Yes
To engage Aboriginal Business Enterprises in support of the Aboriginal Procurement Policy, Local Decision Making agreement or other governmental agreement or policy	Yes	Yes	Yes	Yes

6.2.2. E6.2 Restricted Procurement Method

The agency **must** only use direct contracting with the approval of the **Delegate** where there is a single supplier capable of meeting the requirements, or clause 6.3.4 E10 H. Government Occupied Buildings applies, and:

- there is evidence that it is the most effective manner to deliver best Value for Territory; or
- it is impractical or impossible to use an open procurement process

and the contract awarded will be:

- in the form of lease, licence agreement or substantially nonstandard contract; or
- an extension or renewal of an existing contract; or
- for the support or maintenance of existing software, systems or assets; or
- the goods or services are to be delivered in a remote area from a legal entity which has a minimum of 30% of its full-time personnel who are Aboriginal as per exemption 6.3.4 E10O. Remote Procurements; or
- the goods or services are to be delivered by an Aboriginal Business Enterprise in support of the Aboriginal Procurement Policy, Local Decision Making agreement or other governmental agreement or policy.

6.3. Standing Exemptions Issued by the Minister

- a) The Minister responsible for Procurement has issued exemptions under Section 5 and Section 9 of the *Procurement Act* to allow agencies discretion to dispense with specific requirements.

6.3.1. E7 Delegations

- a) With the exception of the power to delegate, the **Accountable Officer** of the following agencies may delegate the powers and functions of the Accountable Officer to the class of personnel identified.
 - Department of Infrastructure, Planning and Logistics to each personnel from time to time holding, acting or performing the duties of General Manager
 - Department of Health to each personnel from time to time holding, acting or performing the duties in each of the positions specified as follows:
 - Chief Operating Officer of Health Services as defined in the *Health Services Act*
 - Deputy Chief Executive and Chief Operating Officer.

6.3.2. E8 Emergency Exemption

- a) The agency **must** only use the emergency exemption for supplies that are urgently required in response to an emergency situation, as defined in Section 18(1) of the *Emergency Management Act*, and cannot be practicably obtained through an open and competitive process. These supplies are exempt from the requirement to:
 - consult with Industry Capability Network NT
 - use Contract and Procurement Services quotation and tendering service
 - undertake a quotation or tender process, including the requirement to invite a Territory enterprise to quote.
- b) Supplies **must** be purchased locally from a Territory enterprise, where practical and appropriate.
- c) The agency **must** provide quarterly reporting to the Procurement Review Board detailing the nature of supplies purchased, value of supplies and reason for using the emergency exemption.

6.3.3. E9 Supplies Consumed Outside of the Northern Territory

- a) Supplies delivered and consumed outside of the NT are exempt from the requirement to invite an offer from a Territory enterprise and consult with Industry Capability Network NT where:
- it is impractical or impossible to source the supplies from a Territory enterprise
 - the use of the exemption is defensible and approved by the **Delegate**.

6.3.4. E10 Public Procurement Exemption

- a) Classes of supplies listed below may be procured using an alternative procurement method and are exempt from the requirement to:
 - use the preferred procurement method
 - invite an offer from Territory enterprises
 - consult with Industry Capability Network NT
 - publish a Future Tender Opportunity.
- b) The agency **must** only use direct contracting with the approval of the **Delegate** in accordance with the procurement method exemption requirements.

A. Library Subscription Services

Includes journal subscriptions including technical publications, article access costs, standardised finding fees and delivery fees where the supplies are unique and only available from a sole supplier.

B. Travel and Freight on Scheduled Services

Includes the purchase of official and other travel and freight on scheduled services:

- the purchase of airfares, car hire and accommodation required in association with travel in accordance with the NTG travel policy, obtained via the Corporate Travel Services Provider
- the use of removalists when arranging the uplift of personal effects of staff, obtained via the staff relocation contract
- freight on scheduled services where freight is not otherwise explicitly provided for in a specific contract e.g. excess baggage in conjunction with official travel.

C. Works of Art

Includes permanent acquisitions including paintings, photographs, statues digital images, carvings, pottery, craft work, literature or ephemeral activity such as specific exhibitions, performances, films and special events etc.

D. Membership of Professional Organisations or Associations and National Peak Bodies

Includes memberships required in relation to the agency's core business.

E. Curriculum Materials

Includes materials only available from sole suppliers or licensors.

F. Copyright and Licensed Supplies

Includes copyright and licensed supplies such as software (where those materials are available only from sole suppliers or licensors), and licences only available from government agencies and statutory authorities.

G. Infrastructure Network

Includes works undertaken on, or required in connection to, an existing infrastructure network, where the network owner is the sole supplier able to undertake those works for technical, legislative or proprietary reasons.

H. Government Occupied Buildings

Includes:

- I. renewal of an existing government office and commercial accommodation lease and/or a variation where the area to be leased is an addition to the area currently within lease (adjoining car parks can be included in the lease arrangements at the sole discretion of the agency).
- II. building owners who undertake building alterations, renovations and/or fit out of their own property on behalf of government tenants. (Building owners undertaking such work will be exempt from the requirement to be accredited with Contractor Accreditation Limited.)
- III. a new government office and commercial accommodation lease that is less than or equal to 1000 square metres net lettable area where an agency identifies specific business and/or facility requirements which necessarily restrict procurement to a limited number of properties or to a single property.

For clarity, references to lease in this exemption includes all forms of tenancy agreement; including licence to occupy.

I. Legal Practitioners and Expert Witnesses

Includes providing legal advice and expertise, and appearance before courts and tribunals.

J. Labouring Services and Remote Locality Police Stations

Includes cleaning and ground-maintenance (labouring services) at remote locality police stations.

K. Cattle and buffalo for research purposes

Includes purchases through stock and station agents.

L. Lease of equipment, display space and other conference services

Includes forwarding of freight through interstate and overseas exhibition and conference organisers and their nominated subcontractors. This exemption allows agencies attending an interstate or overseas exhibition or conference to pay the conference fees, to acquire display space through the organising body, send freight through the nominated freight forwarder, rent TV, lighting, pot plants etc. through whichever subcontractor has been appointed to provide these requirements.

M. Specialist Police, Fire and Emergency Services Equipment

Includes purchase, from interstate and overseas, of specialist tactical equipment available from a sole supplier, defined as:

- lethal and non-lethal weapons and sighting systems
- specialist chemical, biological, nuclear and radiological equipment (CBN-RE) of a restricted nature
- protective clothing including specialist ballistic armour, helmets, webbing and load bearing equipment.
- information communication technology, including digital communication systems, not available to the general public or those operating as part of a secure network, including the installation and repair of hardware components of a proprietary nature relating to the original equipment manufacturer's warranty and intellectual property provisions, where the upgrade of software necessitates hardware and peripheral component replacement

- intelligence gathering systems
- vision enhancing and electronic listening systems
- specialist method of entry and extraction equipment
- bomb response capability specialist equipment.

The exemption **should** only be used where the supplies are only available from a sole supplier due to proprietary reasons resulting from their specialist nature or where it is not in the public interest to advertise the supplies publicly. Where the exemption is used agencies **must** be able to reasonably demonstrate its compliance with this requirement. For example:

- any equipment or service where disclosure may compromise operations of a sensitive or classified nature with the approval of the **Accountable Officer**
- rapid acquisitions of an operational nature in support of a defined declaration of emergency, or in support of national contingency plans such as the NT's contribution to National Counter Terrorism Operations and Border Security
- any supplies that are of a covert nature where it is not in the public interest to use the services provided by Contracts and Procurement Services and purchases are handled by NT Police, Fire and Emergency Services Procurement Unit with the approval of the **Accountable Officer**
- the requirement to advertise such purchases is waived where an exemption has been granted by the Minister.

N. Attendance and Participation Fees for non-NT Government instigated and hosted Training, Seminars and Conferences

- Participation in the event **must** be available to the general public or selected network that includes private or non-NTG participants.
- Establishment of the event **must** not be instigated by NTG, including via funding arrangements.

O. Remote Procurements

Procurement activities for supplies to be delivered in a remote area from a legal entity which has a minimum of 30% of its full-time personnel who are Aboriginal are exempt from the public offer requirements.

The following is a list of remote Aboriginal communities (homelands and outstations may also be included where appropriate):

- | | | |
|-------------------|---------------------------------|-------------------------------------|
| • Acacia Larrakia | • Kaltukatjara | • Pigeon Hole |
| • Ali Curung | • Kintore (Walungurru) | • Pirlangimpi |
| • Alpururulam | • Kybrook Farm | • Pmara Jutunta
(Ti Tree 6 Mile) |
| • Amanbidji | • Lajamanu | • Ramingining |
| • Amoonguna | • Laramba | • Rittarangu |
| • Ampilatwatja | • Maningrida | • Robinson River |
| • Angurugu | • Manyallaluk | • Santa Teresa |
| • Aputula (Finke) | • Milikapiti | • Tara |
| • Areyonga | • Milingimbi | • Titjikala |
| • Atitjere | • Milyakburra | • Umbakumba |
| • Barunga | • Minjilang | • Wadeye |
| • Belyuen | • Minyerri | • Wallace Rockhole |
| • Beswick | • Mt Liebig | • Warruwi |
| • Binjari | • Mutitjulu | • Weemol |
| • Bulla | • Nauiyu (Daly River) | • Willowra |
| • Bulman | • Nganmarriyanga
(Palumpa) | • Wilora |
| • Daguragu | • Ngukurr | • Wurrumiyanga
(Nguui) |
| • Engawala | • Nturiya (Ti Tree) | • Wutunugurra
(Epenarra) |
| • Galiwinku | • Ntaria
(Hermannsburg) | • Yarralin |
| • Gapuwiyak | • Numbulwar | • Yirrkala |
| • Gunbalanya | • Nyirripi | • Yuelamu |
| • Gunyangara | • Owairtilla (Canteen
Creek) | • Yuendumu |
| • Haasts Bluff | • Papunya | |
| • Imangara | • Peppimenarti | |
| • Imanpa | | |
| • Jilkminggan | | |
| • Kalkarindji | | |

P. Partnership Agreement with Charles Darwin University

The Partnership Agreement covers the period 3 November 2017 to 2 November 2024 and this exemption applies for the duration of the agreement.

The Partnership Agreement's objective is that the economic, social and environmental development of the Northern Territory is supported by a robust and resilient University working in partnership with government Agencies and the wider community.

This exemption may be used where the services required fall under the core outcomes in the Partnership Agreement and following the procurement process specified in the Partnership Agreement.