# Checklist of mandatory requirements of the Direction and Instructions for Public Construction Procurement

**Public Construction
Current as at 20 May 2019**

**Relevant Direction:** [10.1 Responsibilities of the Accountable Officer](https://www.dtf.vic.gov.au/ministerial-directions-and-instructions-public-construction-procurement/responsibilities-accountable-officer-direction-101)

The [Directions and Instructions for Public Construction Procurement](https://www.dtf.vic.gov.au/public-construction-policy-and-resources/ministerial-directions-and-instructions-public-construction-procurement) are enforced by the [Financial Management Act Standing Directions 2016](https://www.dtf.vic.gov.au/financial-management-government/standing-directions-minister-finance-2016), which set out requirements to demonstrate compliance with the Directions and Instructions, including public attestation in annual reports.

This checklist details the mandatory requirements Responsible Bodies and Accountable Officers must meet to allow for full attestation of compliance with the Directions. The checklist does not include procurement requirements covered by other procurement frameworks, for example the policies issued by the Victorian Government Purchasing Board.

References:
Dir refers to the **Ministerial** **Directions for Public Construction Procurement**
Inst refers to the **Instructions for Public Construction Procurement**.

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| **Reference** | **Requirement** | **✓ / NA** |
| Dir 1.3.2Agencies that must comply with these Directions | 1. All Agencies, except for Excluded Entities, must comply with these Directions.
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| 1. A Portfolio Department must, in respect of any Portfolio Agency that is not an Excluded Entity:
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| 1. provide advice and support to the Portfolio Agency in relation to complying with these Directions; and
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| 1. support the Responsible Minister in the oversight of Portfolio Agencies and the Responsible Minister's portfolio as a whole, including providing information to the Responsible Minister concerning his/her Portfolio Agencies' Public Construction Procurement activities.
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| Dir 1.3.3Excluded Entities | 1. For the purposes of these Directions, the following Agencies are Excluded Entities:

any school council constituted under Part 2.3 of the **Education and Training Reform Act 2006 (Vic)**;(ii) any incorporated committee of management, unless the committee is listed in the Instructions;* 1. any class B cemetery trust constituted under section 6 of the **Cemeteries and Crematoria Act 2003 (Vic)**;

(iv) any 'registered unit' as defined in the Victoria State Emergency Service Act 2005 (Vic); and(v) any 'volunteer brigade' as defined in the **Country Fire Authority Act 1958 (Vic)**. |  |
| 1. Excluded Entities must undertake Public Construction Procurement in accordance with the requirements established pursuant to Ministerial Direction 1.3.4.
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| Dir 1.3.4Portfolio Department responsibility in respect of any Portfolio Agency that is an Excluded Entity | The following Agencies must establish appropriate requirements for Public Construction Procurement undertaken by Excluded Entities: |  |
| 1. in respect of the Excluded Entities in Direction 1.3.3(a)(i) to 1.3.3(a)(iii), the Portfolio Department of the Excluded Entity; and
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| 1. in respect of the Excluded Entities in Direction 1.3.3(a)(iv) and 1.3.3(a)(v), the Victoria State Emergency Service and Country Fire Authority respectively.
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| These requirements must: |  |
| * 1. be consistent with the principles set out in Direction 1.2;
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| * 1. take account of the requirements of these Directions, including the Instructions;
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| * 1. be consistent with the Excluded Entity's governing legislation; and
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| * 1. include appropriate accountability arrangements and monitoring of the Excluded Entity’s Public Construction Procurement activities by the Agency responsible for issuing the requirements to ensure the Excluded Entity’s compliance with the requirements.
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| Dir 1.4.3Exemption procedures | 1. Exemptions must be requested in accordance with Instruction 1.4
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| Inst 1.4Exemptions | The Accountable Officer of the Agency seeking an exemption must: |  |
| ensure that an application for an exemption under Direction 1.4: |  |
| 1. is in writing;
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| 1. states the reasons why the exemption is necessary;
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| 1. specifies the proposed alternative action or procedures that will be adopted by the Agency; and
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| 1. explains how the alternative action or procedures will ensure that Public Construction Procurement is undertaken in a manner that is consistent with the principles set out in Direction 1.2;
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| ensure that the proposed alternative action or procedures are not implemented until after an exemption is provided, to the extent that the action would otherwise conflict with these Directions and Instructions or require unnecessary duplication; | 🞎 |
| ensure that the Agency complies with the conditions of any exemption provided under Direction 1.4; and | 🞎 |
| maintain a record of applications for exemptions requested by their Agency under Direction 1.4, including whether or not the exemption was granted and any conditions upon which the exemptions were granted, and must make a record available for inspection by the Auditor-General. | 🞎 |
| Dir 2.1International Agreements | If the requirements of an International Agreement apply to an Agency when undertaking Public Construction Procurement, the Agency must ensure that it complies with the additional requirements set out in Instruction 2.1. | 🞎 |
| Each agency is responsible for ensuring that it confirms whether Instruction 2.1 applies to the engagement of a supplier to perform Works or Construction Services. | 🞎 |
| Inst 2.1.1When International Agreements apply | Instruction 2.1.1 describes when International Agreements apply. |  |
| Inst 2.1.2When International Agreements do not apply | Instruction 2.1.2 describes when International Agreements do not apply. |  |
| Inst 2.1.3Require-ments of International Agreements | Where International Agreements apply, Agencies must follow the requirements of Attachment 2 to Instruction 2.1. | 🞎 |
| Inst 2.2.1When the Australia New Zealand Government Procurement Agreement applies | All Agencies must apply the provisions of the Australia New Zealand Government Procurement Agreement.Subject to Instruction 2.2.2, the requirements of the Australia New Zealand Government Procurement Agreement apply to all procurement activity. | 🞎 |
| Inst 2.2.2When the Australia New Zealand Government Procurement Agreement does not apply | Instruction 2.2.2 describes when the Australia New Zealand Government Procurement Agreement does not apply. |  |
| Inst 2.2.3Require-ments of the Australia New Zealand Government Procurement Agreement | Subject to Instruction 2.2.2, the Australia New Zealand Government Procurement Agreement requires the following principles to be applied.The requirements of the Australia New Zealand Government Procurement Agreement are set out in Instruction 2.2.2. |  |
| Dir 3.1Tender preparation and planning | Before starting a process to engage a supplier to perform Works or Construction Services, Agencies must ensure that appropriate preparation and planning are undertaken to guide the tender process from tender development to contract award, as well as for project delivery and contract management.*Issues to consider when determining the timing, scale and matters to address in procurement planning appear in Direction 3.1**Issues to consider on the use of cost estimates and multiple priced options appear in Instruction 3.3.2* | 🞎 |
| Inst 3.1.1Requirements for tender planning | The tender strategy must document the:* 1. project staging and structuring;
	2. scope of works being tendered;
	3. tender approach; and
	4. form of invitation to tender.

*Issues to consider when determining key dates and time periods appear in Instruction 3.1.1 and Instruction 3.1.2* | 🞎 |
| Dir 3.2Competition and contestability | To promote competition and contestability, when engaging a supplier to perform Works or Construction Services, Agencies must use:1. an open tender;
2. a Selective Tender open to:
	1. all suppliers in the relevant category of a Register; or
	2. at least three suppliers in the relevant category of a Register; or
3. a Limited Tender conducted in accordance with the Instructions.
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| Inst 3.2.1Limited tender processes | Agencies may use a Limited Tender if:* 1. the value of the engagement is expected to be less than $50,000 (inclusive of GST), in which case the Agency may invite a single potential tender participant to participate in the Limited Tender;
	2. the value of the engagement is expected to be:
		1. in the case of Works, more than $50,000 (inclusive of GST) but less than $500,000 (inclusive of GST); or
		2. in the case of Construction Services, more than $50,000 (inclusive of GST) but less than $200,000 (inclusive of GST),

in which case the Agency must invite at least three potential tender participants to participate in the Limited Tender;* 1. the Special Circumstances set out in Instruction 3.2.2 apply, in which case the Agency must comply with the requirements in Instruction 3.2.1 paragraph (b); or
	2. procuring under a Supplier Panel established in accordance with the Directions, as the rules of that panel allow.
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|  | Where a Limited Tender is conducted is accordance with Instruction 3.2 paragraph (a)(iii) the Agency must:* 1. determine the most appropriate way to conduct the Limited Tender taking into account the nature of the Special Circumstances and, to the extent practicable, identify ways to conduct the Limited Tender in a manner that is consistent with the principles set out in Direction 1.2, and otherwise in accordance with the requirements of the Directions;
	2. document the nature of the Special Circumstances and proposed approach to conducting the Limited Tender; and
	3. ensure the Accountable Officer or Responsible Minister of the Agency approves the use of a Limited Tender and the proposed approach to conducting the Limited Tender.

To avoid doubt, paragraph (b) does not apply to Limited Tenders conducted in accordance with Instruction 3.2.1 paragraphs (i) and (ii) of paragraph (a). | 🞎 |
|  | 1. An Agency may procure Works or Construction Services from a group purchasing scheme only if the procurement and contracting processes used by the group purchasing comply with these Ministerial Directions and Instructions.
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| Inst 3.2.2Special Circumst-ances | Instruction 3.2.2 sets out the Special Circumstances that may be taken into account when considering use of a Limited tender |  |
| Inst 3.2.3Multi stage procurement processes | Agencies may use multi-stage procurement processes when conducting open or Selective Tenders. |  |
| When conducting a multi-stage procurement process for a Selective Tender, the initial invitation stage may be either open or selective. | 🞎 |
| For clarity, the requirement to use a forward notice set out in Instruction 5.1 applies to multi-stage tender processes. The forward notice must be used in advance of the first notice that starts the multi-stage tender process. | 🞎 |
| Dir 3.3Promoting efficiency in the tender process | Tender processes involve time and cost for suppliers and the procuring Agency. When engaging a supplier to perform Works or Construction Services, Agencies must ensure the tender process:*Issues to consider when preparing the Tender Documentation and issues to consider when undertaking procurement planning appear in Instruction 3.3.1* |  |
| is appropriate for the Procurement Model and, to the extent practicable, is consistent with the way in which the Agency conducts comparable processes; | 🞎 |
| is conducted in an efficient and timely manner; and | 🞎 |
| is structured in a way that takes account of the cost of participating in a tender process for both tender participants and the Agency and seeks to reduce unnecessary transaction costs for all participants. | 🞎 |
| Inst 3.3.1Do not request unnecessary information | When conducting a tender process using a Register, Agencies must, to the extent practicable, make use of information provided during the prequalification process for the Register to reduce the amount of information that prequalified tenders are required to provide during the tender process. | 🞎 |
| Inst 3.3.3Have a firm intention to proceed before issuing the tender | Agencies must ensure there is a firm intention to proceed with the Works or Construction Services before beginning a tender process.*Issues to consider about advising tender participants if funding is not confirmed appear in Instruction 3.3.3* | 🞎 |
| Dir 3.4Tender Notices | To promote competition and contestability, and to ensure open and fair competition, when advertising a tender to perform Works or Construction Services, Agencies must provide potential tender participants with appropriate notice of the tender process, including issuing a Tender Notice in accordance with the Instructions. | 🞎 |
| Inst 3.4.1Tender Notices | Tender Notices must give all potential participants in the tender process effective notice that it has begun, being: |  |
| for an open tender, all potential tender participants, and | 🞎 |
| for a Selective Tender or a Limited Tender, each potential tender participant invited to participate in the tender process. | 🞎 |
| Inst 3.4.2Tender Notice – format and content | For open tenders, in addition to any other means of publication, Tender Notices must be published on the website or system nominated by the Secretary using the applicable form. | 🞎 |
| For Selective Tenders and Limited Tenders, in addition to any other means of communication, a tender Notice must be sent to each potential tender participant invited to participate in the tender process from the website or system nominated by the Secretary where the expected value of the Selective tender or Limited Tender is greater than:for Works – the upper limit stated in Instruction 3.2.1(a)(ii)(1); orfor Construction Services – the upper limit stated in Instruction 3.2.1(a)(ii)(2). | 🞎 |
|  | If Tender Documentation is not included in the Tender Notice, then the Tender Notice must provide details about how to obtain access to the Tender Documentation. | 🞎 |
| Dir 3.5Tender open times | Agencies must ensure tender participants are allowed a reasonable time period to respond to a tender following the publication of the Tender Notice.*Issues to consider when determining the tender period appear in Direction 3.5* | 🞎 |
| Dir 3.6Tender Document-ation | Agencies must ensure that Tender Documentation is appropriate for the tender process and Procurement Model.*Issues to consider on the format of Tender Documentation appear in Direction 3.6* | 🞎 |
| Tender Documentation released to the market must be drafted to promote open and fair competition by providing all potential participants in the tender process with access to the same information about the tender process and the Works or Construction Services the Agency is seeking. | 🞎 |
| Agencies must ensure that Tender Documentation is clearly drafted and provides participants (and potential participants) with the information they need to understand the requirements of the relevant stage of the tender process, including the matters set out in Instruction 3.6.1(c) and as otherwise required by these Directions.*Issues to consider about issuing late and multiple addenda appear in Instruction 3.6.3* | 🞎 |
| Before beginning a tender process, Agencies must ensure the Tender Documentation is sufficiently resolved to minimise the need for addenda or changes during the tender process. | 🞎 |
| Inst 3.6.1Form of tender documents | Agencies must use model Tender Documentation designed for use with a Victorian Public Construction Contract where appropriate. | 🞎 |
| Inst 3.6.2Terms and conditions to be set out in Tender Document-ation | Agencies must include the following information in Tender Documentation, as appropriate for the relevant stage of the tender process: |  |
| the Agency's project objectives; | 🞎 |
| appropriate detail of the Works or Construction Services the Agency is seeking, including the statement of requirements or design specification (as applicable); | 🞎 |
| the terms and conditions applicable to the tender process, including: * 1. evaluation criteria applicable to the relevant stage of the tender process, with any mandatory criteria identified;
	2. the tender closing date and time;
	3. the place and process for lodging tenders;
	4. how the Agency will handle late tenders;
	5. whether or not the tender process will include briefings, interviews, negotiations, or provide for a best and final offer process; and
	6. how the Agency will handle alternative or non-conforming tenders;
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| details of the documentation and responses that tender participants are expected to submit; | 🞎 |
| the terms on which the successful supplier will be engaged to perform the Works or Construction Services, including, at the relevant stage of the tender process, the form of contract; and | 🞎 |
| information about relevant government policies that apply to the procurement for example, the Victorian Industry Participation Policy. | 🞎 |
| Dir 3.7Evaluation plan | Agencies must consider how responses for the relevant stage of the tender process will be evaluated before to releasing Tender Documentation to the market to ensure the information requested and the evaluation plan are aligned. | 🞎 |
| Agencies must ensure the evaluation plan is:* 1. substantively complete before the release of Tender Documentation; and
	2. finalised before the tender closing date.
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| Dir 3.7.2Disclosure of evaluation criteria | Evaluation criteria must be disclosed in the Tender Documentation. | 🞎 |
| Any mandatory criteria must be indicated in the Tender Documentation. | 🞎 |
| Dir 3.7.3Mandatory evaluation criteria | Agencies must ensure that any supplier engaged to perform Works or Construction Services satisfies the mandatory evaluation criteria as required by the Instructions prior to entering into the engagement. | 🞎 |
| Dir 3.7.4Determining evaluation criteria | Agencies must select evaluation criteria, as part of preparing the evaluation plan, before releasing Tender Documentation to the market. | 🞎 |
| Inst 3.7.1Evaluation plan | The evaluation plan must set out the:tender evaluation criteria, including identifying of any mandatory criteria;relative importance and associated weightings of the evaluation criteria;evaluation methodology and how each criteria will be evaluated; andtender evaluation process, including:* 1. who will assess the tenders;
	2. resourcing, such as technical experts required to assess certain criteria;
	3. which evaluation committee members will have access to what information, and
	4. how each evaluation criteria will be assessed and scored.
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| Inst 3.7.2Disclosure of evaluation criteria | In addition to disclosing the evaluation criteria in the Tender Documentation and indicating any mandatory evaluation criteria, Agencies may, but are not required to provide tender participants with:guidance about the evaluation criteria for the purpose of encouraging responsive tenders; andan indication of the relative importance or weighting of the evaluation criteria in Tender Documentation. | 🞎 |
| Inst 3.7.3Mandatory evaluation criteria | Evaluation criteria used by Agencies must include the following mandatory evaluation criteria:value for money, which must be the primary determinant of the procurement outcome, after taking into account all of the individual evaluation criteria including price;the occupational health and safety management criteria set out in Attachment 1 to Instruction 3.7, where:* 1. in the case of Works, the value of the Works exceeds $500,000 (inclusive of GST); and
	2. in the case of Construction Services, the value of the Construction Services exceeds $200,000 (inclusive of GST);

the industrial relations management criteria set out in Attachment 2 to Instruction 3.7, where the procurement includes supply of Works and the value of the Works (or Works component) exceeds $500,000 (inclusive of GST); andappropriate criteria to enable consideration of each tender participant's past performance in delivering Works or Construction Services whether for Agencies within the Victorian Government, other governments or non-government organisations | 🞎 |
| In the case of the mandatory criteria referred to in paragraphs (b) and (c), Agencies must ensure that a tender participant satisfies the criteria before awarding a contract to perform Works or Construction Services. | 🞎 |
| Where a tender participant has already been assessed against the mandatory criteria as part of a prequalification process, whether as part of qualification or requalification to a Register, becoming a member of a Supplier Panel or through an expression of interest process, then the Agency does not need to reassess the tender participant against the criteria provided they confirm, prior to contract award, that:in the case of a tender participant prequalified on a Register or a member of a Supplier Panel, the tender participant remains on that Register or Supplier Panel; andin all cases, there has been no material change to the information submitted to satisfy the criteria (whether at the time of prequalification or requalification, or during the expression of interest process) whether positive or negative, that would affect the tender participant's ability to satisfy the criteria. | 🞎 |
| Inst 3.7.5Approved assurance systems | Approved assurance systems may be cited by suppliers of Works or Construction Services as evidence of complying with the mandatory evaluation criteria listed in Instruction 3.7.3 (b) and (c).Note that assessment using approved assurance systems will address the mandatory occupational health and safety management criteria numbered 1 – 10 for suppliers of Works or Construction Services set out in Attachment 1 to Instruction 3.7, but current information will always be required regarding the criteria numbered 11 and 12 set out in Attachment 1 of Instruction 3.7. | 🞎 |
| Dir 4.1Probity requirements | When undertaking Public Construction Procurement, Agencies must: |  |
| conduct Public Construction Procurement in a manner that is consistent with Public Sector Values; | 🞎 |
| treat tender participants (and potential tender participants) fairly and equally, and avoid giving one tender participant an improper advantage over another; | 🞎 |
| maintain confidentiality of participants confidential information, including commercially sensitive information and intellectual property; | 🞎 |
| ensure tender processes, negotiations, evaluation processes, and contract management processes are auditable, transparent and accountable; and | 🞎 |
| proactively identify and manage conflicts of interest whether real, potential or perceived appropriately and in accordance with applicable legal and policy requirements, including applicable Victorian Public Sector codes of conduct. | 🞎 |
| Inst 4.1.1Apply Public Sector values | When conducting Public Construction Procurement Agencies must apply Public Sector Values and make informed decisions based on merit. | 🞎 |
| Inst 4.1.2Treat tender participants fairly and equally | When conducting Public Construction Procurement Agencies must treat all tender participants and potential tender participants fairly and equally:Endeavour to provide all tender participants and potential tender participants in a tender process with access to the same information and ensure that they are all promptly informed of any new information relevant to the tender process that is provided to any other tender participant (or potential tender participant).Establish a clear process for receiving and responding to questions and clarifications.Ensure fair and reasonable access to the data room or similar facility (if any).Ensure fair and reasonable allocation of site visits (if any). | 🞎 |
| Inst 4.1.3Maintain confidentiality of tender participants’ confidential information | When conducting Public Construction Procurement Agencies must maintain confidentiality of each tender participants' confidential information, including commercially sensitive information and intellectual property. This includes when providing additional information to tender participants in response to a question or a clarification. | 🞎 |
| Inst 4.1.4Auditable, transparent and accountable tender and contract management processes | When conducting Public Construction Procurement, Agencies must ensure tender and contract management processes are auditable, transparent and accountable by creating and maintaining appropriate records, including:all documents issued to tender participants and potential tender participants in the tender process;all communications with tender participants and potential tender participants in the tender process;records of access to the data room (if any);records of site visits (if any);tenders received;the evaluation plan and the evaluation process;records of post-tender negotiations;records of actions taken to address any real, potential or perceived conflicts of interest;the contract and contract documents; anddocuments issued pursuant to the contract, including variations, formal notices, performance security given and received by the Agency (as applicable), certificates and reports under the shared reporting regime. | 🞎 |
| Inst 4.1.5Commitment from tender participants | When conducting Public Construction Procurement Agencies must obtain a commitment from each tender participant, as a condition of participating in the process. *The text of the commitment is listed in Instruction 4.1.5.* | 🞎 |
| Dir 4.2Managing probity in Public Construction procurement | Agencies must have appropriate systems in place to ensure probity for all Public Construction Procurement including where required by the Instructions: | 🞎 |
| a probity plan | 🞎 |
| using a probity practitioner. | 🞎 |
| Inst 4.2.1Systems and processes to manage probity | Agencies must have appropriate systems and processes in place to manage probity in Works or Construction Services, to ensure they are able to conduct the procurement in line with the principles in Direction 4.1. | 🞎 |
| Inst 4.2.2Probity plan | In addition to the general systems and processes required to manage probity in the procurement of Works or Construction Services, the Agency undertaking the procurement must prepare a probity plan before beginning a tender process if the Works or Construction Services being procured are:likely to exceed $10 million (inclusive of GST); orcomplex or otherwise high risk. | 🞎 |
| The probity plan must address:probity responsibilities;probity risks and related management strategies;probity services to be provided by internal or external advisers to support the procurement,applicable legal obligations, procurement rules and policies; andprocesses for managing communications, security and confidentiality during the tender process.*Issues to consider about engaging a probity practitioner appear in Instruction 4.2.2* | 🞎 |
| Dir 5.1Forward notices | Agencies must publish forward notice of all upcoming tender processes for Works or Construction Services in accordance with the Instructions to promote competition and allow potential tender participants to plan for and allocate resources to participating in tender processes. | 🞎 |
| Inst 5.1.1Publishing forward notices for an upcoming procurement | Agencies must provide an appropriate period of forward notice of upcoming procurements, taking account of:the nature and complexity of the Works or Construction Services;the likely tender participants and market characteristics, including whether it will be necessary for participants to establish consortia or likely interest from international tender participants; andthe tender strategy and Procurement Model. | 🞎 |
| Inst 5.1.2Forward notices – format and content | Subject to Instruction 5.1.3, in addition to any other means of publication or provision of notice to potential tender participants, forward notices must be published on the website or system nominated by the Secretary using the applicable form, and include the following information, to the extent known at the time of publication:indication of the expected timing and location for release of the Tender Notice;general nature of the Works or Construction Services to be procured, including the reference code used in the applicable form;location where the Works or Construction Services are to be delivered;the Procurement Model;indication of the likely tender process to be used, including whether:* 1. the tender process will be conducted as an open or a Selective Tender;
	2. a single- or multi-stage tender process will be used, and
	3. in the case of a Selective Tender, the type of Selective Tender that will be conducted;

any minimum certification requirements or technical capability requirements, including in the case of a Selective Tender, the relevant prequalification category or categories;government policies applicable to the procurement, such as the Local Jobs First - Victorian Industry Participation Policy; andthe Agency contact information. | 🞎 |
| Publication of a forward notice on the website or system nominated by the Secretary is encouraged, but not required, for Limited Tenders, where appropriate given the grounds for conducting a Limited Tender. | 🞎 |
| Inst 5.1.3Forward notices – when to use | A forward notice must be used for open tenders.A forward notice must be used for Selective Tenders where the expected value of the Selective Tender is greater thanfor Works – the upper limit value stated in Instruction 3.2.1(a)(ii)(1.); or(ii) for Construction Services - the upper limit value stated in Instruction 3.2.1(a)(ii)(2.). | 🞎 |
| Dir 5.2Publishing details of procurements undertaken | Agencies must publish the outcome of each tender process to engage a supplier to perform Works or Construction Services, along with key details of the tender process and engagement in accordance with the Instructions. | 🞎 |
| In addition to complying with Instruction 5.2.1, Agencies that must comply with Financial Reporting Directive 12B must publish contracts for Works or Construction Services under that Directive. | 🞎 |
| Inst 5.2.1Disclose details of contracts | Within 60 days after the award of a contract, Agencies must publish on the website or system nominated by the Secretary: | 🞎 |
| the key details of contracts for Works or Construction Services with a total estimated value equal to or exceeding $100,000 (inclusive of GST) whether procured through an open tender, Selective Tender or Limited Tender; and | 🞎 |
| full contract information for contracts for Works or Construction Services with an estimated value exceeding $10 million (inclusive of GST) under Financial Reporting Direction 12B. | 🞎 |
| Inst 5.2.2Contracts subject to disclosure | Disclosure relates to all contracts for Works or Construction Services valued above the foregoing amounts, including:agreements for procurements of Works or Construction Services;head agreements such as standing offer arrangements or agreements establishing a Supplier Panel;agreements entered into under head agreements such as engagements under standing offer arrangements or a Supplier Panel to perform Works or Construction Services;agreements entered into with suppliers from a Register; andagreements to vary any of the foregoing.Disclosure is not required where the contract was awarded following a Limited Tender process conducted due to the existence of the Special Circumstances set out in Instruction 3.2.2 ‘for the protection of essential security interests’. | 🞎 |
| Disclose contract information in the manner described in Attachment 1 to Instruction 5.2. | 🞎 |
| Dir 6.1Use of Registers and Supplier Panels | When conducting a Selective Tender or engaging a supplier from a Register or Supplier Panel to perform Works or Construction Services, Agencies must use a Register or Supplier Panel established and operated in accordance with the Instructions. | 🞎 |
| Agencies may only establish, operate and use a Register, with the prior approval of the Secretary as set out in the Instructions. | 🞎 |
| Inst 6.1.1Approving a Register | Agencies other than the Agency responsible for an Agency-specific Register may use an Agency-specific Register with the written consent of the Agency responsible for the Agency-specific Register. | 🞎 |
| Transitional use of Registers1. Agencies are permitted to use Registers already in operation, pending approval under Direction 6.1(b), in accordance with the transitional processes published by the Department.
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| (e) If, under the processes described in the previous paragraph, an Agency is advised that a Register is no longer permitted for transitional operation, the Agency must discontinue operation of that Register from the date the Agency is notified of the decision. | 🞎 |
| Inst 6.1.2Require-ments to establish a Register | All Registers must:clearly define the purpose, target users and responsible persons for the Register;document conditions, obligations and undertakings of the responsible Agency, applicants and registrants, which form the terms of agreement between the parties including having required professional registrations in place;provide for those conditions to be publicly available to prospective applicants and reissued to registrants when they are altered;apply assessment criteria, including the mandatory evaluation criteria set out in Instruction 3.7.3, using a process that is fair and consistent for all applicants;be an open system that allows applications to be made at any time and to also be publicly advertised at least once each year or employ continuous advertisement process such as on a website;provide for both an ongoing and a periodic review of registrants;* 1. manage feedback on the performance of registrants;
	2. undertake reviews; and
	3. maintain records of reviews;

advise applicants and registrants of their current status and, where relevant, of actions necessary to enable or retain registration;provide an appeal process, independent of those responsible for the Register, where an application has been refused or where downgrading or removal from the Register is proposed; andprovide for the suspension or de-registration of registrants who no longer meet the assessment criteria or whose performance is proven to be poor. | 🞎 |
| Inst 6.1.4Use of Registers and Supplier Panels | When establishing a Supplier Panel, Agencies must: |  |
| establish the Supplier Panel using an open tender or Selective Tender; | 🞎 |
| establish rules of use that are consistent with the principles set out in Direction 1.2;* 1. establish and operate the Supplier Panel for a period for time specified in the initial Tender;
	2. require members of a Supplier Panel to enter into an agreement with the sponsoring Agency, which sets out the type of Works or Construction Services that may be procured from the Supplier Panel and the terms and conditions on which the Works or Construction Services will be performed;
	3. require members of a Supplier Panel to nominate rates and, where appropriate, personnel for the Works or Construction Services to be performed under the Supplier Panel agreement;
	4. identify any other requirements including specialist qualifications or certification such as industry-specific health and safety certification that must be met by members of a Supplier Panel; and
	5. establish appropriate processes to monitor and record performance of members of a Supplier Panel under the Panel agreement.
	6. For the avoidance of doubt, a forward notice as set out in Instruction 5.1 must be used when establishing a Supplier Panel. Once established, forward notices do not need to be used when using a Supplier Panel in accordance with the rules of use for that Supplier Panel.
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| Dir 7.1.2Use of Victorian Public Construction Contracts | When issuing a tender (including a Limited Tender) for Works or Construction Services, an Agency must include an unamended Victorian Public Construction Contract in the Tender Documentation, except: | 🞎 |
| 1. to the extent that amendments are required to comply with law or policy, including these Directions; or
 | 🞎 |
| 1. as permitted in the Instructions.
 | 🞎 |
| Where the Instructions permit the release of a tender that includes either an amended Victorian Public Construction Contract or an alternative form of contract, Agencies must ensure that the form of contract is:1. appropriate for the Procurement Model;
2. consistent with other contracts used by the Agency to engage suppliers to perform comparable Works or Construction Services; and
3. consistent with any applicable Victorian Government policy, including any mandatory requirements or approvals required under those policies or set out in the Instructions
 | 🞎 |
| In addition to Direction 7.1.2(b), where the Instructions permit the release of a tender that includes an amended Victorian Public Construction Contract, Agencies must:1. avoid unnecessary amendments; and
2. clearly identify any amendments to allow tender participants to readily identify the differences from the approved form of contract.
 | 🞎 |
| Dir 7.1.3Departures to contracts during tender negotiation | (a) Agencies may, at their discretion, accept non-material contract departures requested by tenderers. | 🞎 |
| (b) Agencies must obtain approval under the Instructions before accepting a material contract departure proposed by a tenderer. | 🞎 |
| Dir 7.1.4Amendments to contracts during life of contract | (a) Agencies may, at their discretion, agree to non-material contract amendments at any time after the contract is executed. | 🞎 |
| (b) Agencies must obtain approval under the Instructions before agreeing to a material contract amendment after a contract is executed. | 🞎 |
| Dir 7.1.5Departures and amendments to comply with law and policy | For the avoidance of doubt, Agencies must ensure that departures and amendments under Directions 7.1.3 and 7.1.4 comply with these Directions, the Instructions and any legal, policy or probity requirements | 🞎 |
| Dir 7.1.6Projects subject to the High Value High Risk Framework | For Public Construction Procurements subject to the High Value High Risk Project Assurance Framework: |  |
| an amended Victorian Public Construction Contract or an alternative form of contract permitted under that framework is permitted under these Directions; | 🞎 |
| material contract departures approved under the High Value High Risk Framework do not require separate approval under Direction 7.1.3(b); and | 🞎 |
| material contract amendments approved under the High Value High Risk Framework do not require separate approval under Direction 7.1.4(b). | 🞎 |
| Dir 7.1.7Partnerships and alliancing | Public Construction Procurements that are subject to the Partnerships Victoria Requirements or the Victorian Alliancing Policy:are not required to comply with this Direction 7; andmust use contracts that are consistent with those policies. | 🞎 |
| Inst 7.1.1Victorian Public Construction Contracts | The Victorian Public Construction Contracts are those contracts listed as being Victorian Public Construction Contracts on the Department’s website. |  |
| The Victorian Public Construction Contracts approved under Instruction 7.1.1(a) must be: |  |
| published on the Department’s or an Agency’s website; or | 🞎 |
| made available for inspection on request where publication is not possible due to third party intellectual property rights. | 🞎 |
| Inst 7.1.2Use of Victorian Public Construction Contracts | (aa) An Agency is permitted under Direction 7.1.2(a)(ii) to issue a tender that includes an alternative form of contract for Works or Construction Services valued up to $15,000 (inclusive of GST). | 🞎 |
| An Agency is permitted under Direction 7.1.2(a)(i) to issue a tender that includes an amended Victorian Public Construction Contract or an alternative form of contract if one or more of the following circumstances apply:Victorian Public Construction Contracts are inappropriate for the type of Works or Construction Services being procuredVictorian Public Construction Contracts do not sufficiently address interface issues where there are multiple contractors working on a site or where the Works are undertaken on an operational site; orthe Works or Construction Services relate to leased premises or third party property where the form of contract is required to be approved by the lessor or such third party. |  |
| Within 30 days after issuing a tender that relies on Instruction 7.1.2 paragraph (a), the Accountable Officer must provide a copy of the contract to the Department and details of the applicable circumstances. | 🞎 |
| Transitional use of agency precedent contractsAgencies are permitted to use existing precedent forms of contract instead of Victorian Public Construction Contracts in accordance with the transitional processes published by the Department. | 🞎 |
| If, under the processes described in Instruction 7.1.2 paragraph (a), an Agency is advised that a contract is no longer permitted for transitional use, the Agency must discontinue use of that contract from the date the Agency is notified of the decision. | 🞎 |
| Inst 7.1.3Departures to contracts during tender negotiation | For the purposes of Direction 7.1.3, a material contract departure is one that, taking into account the value, complexity and risk of the Works or Construction Services, could substantially impact the manner in which Public Construction Procurement is undertaken by other Agencies. |  |
| A material contract departure must only be accepted during tender negotiations following approval by the Secretary. | 🞎 |
| A request for approval under Instruction 7.1.3(b) must be made in writing to the Secretary by an Accountable Officer, including:the contract departure marked up against the contract issued at tender; andthe reasons why the departure or departures should be accepted. | 🞎 |
| Inst 7.1.4Amendments to contracts during life of contract | For the purposes of Direction 7.1.4, a material contract amendment is one that, taking into account the value, complexity and risk of the Works or Construction Services, could substantially impact the manner in which Public Construction Procurement is undertaken by other Agencies. |  |
| A material contract amendment must only be agreed to following approval by the Secretary. | 🞎 |
| A request for approval under paragraph (b) must be made in writing to the Secretary by an Accountable Officer, including:description of the nature of the proposed amendment;explanation as to how the proposed amendment arose; andreasons why the proposed amendment should made. | 🞎 |
| Dir 7.2.1Compliance with legislative and policy requirements | Agencies must ensure that contracts for Works or Construction Services comply with policy and legislative requirements, including the policies set out in the Instructions. | 🞎 |
| Dir 7.2.2Non-Standard Commercial Arrange-ments | Agencies must not propose or enter into a Non-Standard Commercial Arrangement, in a tender process or as a contract amendment, except as permitted in the Instructions. | 🞎 |
| Dir 7.2.3Risk allocation | Agencies must ensure that contracts for Works or Construction Services:clearly define the roles and responsibilities of the parties to the contract;identify responsibility for key risks associated with the Works or Construction Services;as far as practicable, allocate risks to the party best able to manage them, andaddress any mandatory requirements set out in the Instructions. | 🞎 |
| Dir 7.2.4 Subcontract-ing | Contracts must contain appropriate mechanisms to ensure that:the Principal has appropriate visibility of, and rights to approve, subcontracting arrangements;terms and conditions of subcontracts are compatible with those of the head contract and consistent with the principles of risk allocation and security of payment set out in this Direction; andthe Contractor demonstrates proof of payment to subcontractors and suppliers. | 🞎 |
| Dir 7.2.5Dispute resolution | Agencies must ensure that contracts provide for efficient and effective resolution of disputes (including through the use of alternative dispute resolution procedures) that take into account the Procurement Model and the nature and complexity of the Works or Construction Services being performed under the contract and any related contracts. | 🞎 |
| Dir 7.2.6Performance security | Where a supplier is required to provide performance security, the contract must allow the supplier to provide an unconditional undertaking, in a form and from a financial institution acceptable to the Agency, as an alternative to cash. | 🞎 |
| Dir 7.2.7Security of payment | Contracts must be consistent with the requirements of the **Building and Construction Industry Security of Payment Act 2002** and provide for:fair entitlement to payment, including identifying appropriate milestone payments; andprompt payment, with interest payable on late payments. | 🞎 |
| Inst 7.2.1Compliance with legislative and policy requirements | Agencies must ensure that all contracts for Works or Construction Services comply with relevant legislative requirements. | 🞎 |
| Agencies must ensure that the following government policy requirements are addressed in all contracts for Works or Construction Services:1. Partnerships Victoria Requirements;
2. Victorian Alliancing Policy;
3. Fair Payments Policy;
4. Protective Data Security Standards;
5. Whole of Victorian Government Intellectual Property Policy;
6. DataVic Access Policy;
7. Supplier Code of Conduct;
8. Local Jobs First – Victorian Industry Participation Policy;
9. Local Jobs First - Major Projects Skills Guarantee; and
10. Victoria’s Social Procurement Framework.
 | 🞎 |
| Agencies must ensure that contracts for Works or Construction Services that are required to comply with the shared reporting regime in Instruction 8.2:1. obtain supplier consent for performance information for that contract being used to evaluate the supplier in future Victorian Government tenders;
2. link to provisions in the Tender Documentation; and
3. require the supplier to cooperate with the shared reporting regime.
 | 🞎 |
| To give contractual effect to commitments made by suppliers under Instruction 4.1.5, Agencies must ensure that contracts for Works or Construction Services:1. include continuing obligations on the supplier, that apply from the date the tender is submitted and survive contract termination or expiry, that mirror the probity commitments made by the Contractor in the tender process; and
2. entitle the Agency to remedies if the obligations are breached, including remedies for substantial breach where appropriate.
 | 🞎 |
| Agencies must ensure that all contracts for Works or Construction Services grant the Agency sufficient rights to comply with legal or policy requirements to disclose information. | 🞎 |
| When procuring services for geotechnical investigations, or Works or Services that may require geotechnical investigations, Agencies must ensure that their contracts provide for the ownership and custody of geoscience data collected for the project to be transferred to the State of Victoria, where:1. ‘geoscience data’ includes geological, geotechnical and environmental information, reports, maps, images, recordings, survey results and drill core, drill cutting and associated materials embodied in any form; and
2. ‘geoscience data collected for the project’ includes geoscience data generated, placed, stored, processed, retrieved, printed, accessed, or produced using data supplied by the Principal, for the purpose of the contract.
 | 🞎 |
| When procuring Works, Agencies must ensure that their contracts prohibit the installation into any building of Type A or Type B Construction a Prescribed Combustible Product as part of an External Wall (including as an attachment), as per the **Minister’s Guideline MG-14: Issue of building permits where building work involves the use of certain cladding products**, unless the Contractor or designer has obtained a determination of the Building Appeals Board that the installation of the Prescribed Combustible Product complies with the **Building Act 1993 (Vic)**. | 🞎 |
| When procuring Works that may require the use of tip trucks, Agencies must ensure that their contracts require the Contractor to ensure that any tip truck owner driver engaged in connection with excavation work, directly or indirectly, through one or more subcontractors, is paid according to the following requirements.The requirement of the minimum rates of pay for tip truck owner drivers clause is set out in Instruction 7.2.1(h). | 🞎 |
| Inst 7.2.2Non-Standard Commercial Arrange-ments | Non-Standard Commercial Arrangements must only be proposed or agreed to following approval by the Secretary. | 🞎 |
| A request for approval under paragraph (a) must be made in writing to the Secretary by an Accountable Officer, specifying:1. the nature of the proposed arrangement;
2. how the proposed arrangement arose; and
3. reasons why the proposed arrangement should be approved.
 | 🞎 |
| Inst 7.2.3Early termination (termination for convenience) | If a contract gives the Principal the right to terminate early, the contract must meet the requirements in Instruction 7.7.2(b) and (c).In the event the Principal exercises the right, the Contractor must be required to:1. cease work within the time directed by the Principal
2. demobilise its equipment and personnel from the site
3. secure the site and Works performed to date; and
4. in all circumstances mitigate its costs.

Other than for exceptional projects or where appropriate for the delivery model, the Contractor must not be entitled to:1. future profit on the Works or Construction Services not performed under the Contract; or
2. compensation for economic or consequential loss, including opportunity cost or profit forgone as a result of entering into the contract.
 | 🞎 |
| Inst 7.2.4Subcontract-ing | Agencies must require, at a minimum, statutory declarations from Contractors stating that payments have been made to subcontractors in the form set out in Attachment 1 to Instruction 7.2. | 🞎 |
| Inst 7.2.5Liability caps and exclusions | A Contractor’s liability must not be excluded or limited for:third party claims against the Principal in respect of personal injury, death, loss or damage to any propertywilful misconduct, wilful default, wilful neglect, gross negligence, fraud or criminal acts or omissions of the Contractor, its employees or agents;liability which cannot be excluded at law; andabandonment of work under the Contract by the Contractor. | 🞎 |
| Dir 8.1Debrief for tender participants | At the conclusion of a process to engage a supplier to perform Works or Construction Services, Agencies must inform all tender participants of the outcome.*Issues to consider when planning a debrief appear in Instruction 8.1* | 🞎 |
| Agencies must offer a debrief to all tender participants and, if the offer of a debrief is accepted, ensure a debrief is provided promptly in accordance with the requirements set out in the Instructions. | 🞎 |
| Dir 8.2Supplier performance and shared reporting regime | Agencies must establish appropriate processes to monitor supplier performance and to receive supplier feedback on the Agency's performance. | 🞎 |
| Agencies must comply with any shared reporting set out in the Instruction. | 🞎 |
| Inst 8.2.1Regime to apply to new procurement only | Public Construction Procurement starting on or after 1 July 2018 must comply with this Instruction 8.2. |  |
| Inst 8.2.2Performance reporting | 1. In additional to any other means of assessing how suppliers perform, Agencies must assess how suppliers perform using the template nominated by the Secretary when:
	1. for suppliers of Works - the value of the contract engaging the supplier is $500,000 (inclusive of GST) or higher, or
	2. for suppliers of Construction Services - the value of the contract engaging the supplier is $200,000 (inclusive of GST) or higher;

with the exception of suppliers engaged under contracts that comply with the Public Private Partnerships requirements or the Victorian Alliancing Policy. |  |
|  | 1. Subject to paragraph (a), Agencies must report on how suppliers perform. Completed reports must be submitted to the website or system nominated by the Secretary at the times set out in Instructions 8.2.2 and 8.2.3.
 | 🞎 |
|  | 1. When assessing how suppliers perform Agencies must provide the supplier with an opportunity to reply to the assessment. This opportunity to reply may be time limited.
 | 🞎 |
| Inst 8.2.3When to assess how suppliers of Works perform | Assess how suppliers of Works perform:every six calendar months from the date of possession of the site until practical completion of the Works, when the expected duration of the contract engaging the supplier is 12 months or longer;within 30 days of the date for practical completion of the Works;within 30 days of the end of the defects liability period for the Works; andat any time when a significant issue affecting the supplier’s performance arises.If a performance report required under paragraph (a) is due to fall within two calendar months of the performance report required at practical completion of the Works, only the performance report at practical completion of the Works need be completed. | 🞎 |
| Inst 8.2.4When to assess how suppliers of Construction Services perform | Assess how suppliers of Construction Services perform:every six calendar months, when the expected duration of the contract engaging the supplier of Construction Services is 12 months or longer;within 30 days of the end of the contract engaging the supplier of Construction Services;for suppliers of Construction Services engaged as designers of buildings or infrastructure - within 30 days of the date when the later of the final design or working drawings and related documents (such as the specification) are submitted;for suppliers of Construction Services where their services affect the delivery of buildings or infrastructure -* 1. within 30 days of the date for practical completion of the Works; and
	2. within 30 days of the end of the defects liability period for the Works;

at any time when a significant issue affecting the supplier’s performance arises.If two performance reports are required within 2 calendar months of each other, only the later of the two reports need be completed. |  |
| Dir 8.3Complaints | Agencies must establish appropriate processes to respond to complaints raised by tender participants (and potential participants) about the conduct of Public Construction Procurement by the Agency. | 🞎 |
| Inst 8.3Complaints | Agencies must ensure that they handle complaints from suppliers and potential suppliers in an appropriate manner. | 🞎 |
| Dir 9.1Standards for public construction | (b) Where relevant, Agencies must ensure compliance with any Standard set out in Instruction 9. | 🞎 |
| Inst 9.1Standard for constructing a community fire refuge | This Standard applies to public construction (as defined in the **Project Development and Construction Management Act 1994 (Vic)**, by or on behalf of Agencies, of any building to be used as a community fire refuge.Community fire refuge has the meaning given to it in section 50A of the **Country Fire Authority Act**.The object and performance requirements for constructing a community fire refuge are set out in instruction 9.1. | 🞎 |
| Dir 10.1Responsibilities of the Accountable Officer | The Accountable Officer of each Agency must, with respect to their Agency: |  |
| ensure the Agency is appropriately resourced with staff qualified and skilled to undertake Public Construction Procurement; | 🞎 |
| establish appropriate and effective governance frameworks to ensure compliance with these Directions and Instructions including appropriate record management systems; | 🞎 |
| ensure appropriate responsibility, authority and accountability for Public Construction Procurement is defined and allocated within the Accountable Officer's operating frameworks, including documenting: | 🞎 |
| who is responsible for monitoring compliance with these Directions and Instructions; | 🞎 |
| ensuring systems and processes to support compliance with these Directions and Instructions are in place; and | 🞎 |
| who is responsible and accountable for decision-making and any approvals required under these Directions and Instructions; and | 🞎 |
| ensure that exemptions from these Directions and Instructions are sought and implemented appropriately. | 🞎 |
| Dir 10.2Delegation | The Accountable Officer may delegate, in writing, powers and responsibilities under these Directions and the Instructions, other than this power of delegation and the certification of Special Circumstances under Instruction 3.2.2(j), in which case: | 🞎 |
| the Accountable Officer must: |  |
| retain accountability for the requirement; | 🞎 |
| oversee the relevant actions of their delegates; | 🞎 |
| ensure that the delegation is appropriate for the efficient and effective conduct of the business of the Agency; | 🞎 |
| ensure that the delegation is assigned to a position and that position is appropriate in relation to the powers and responsibility being delegated; | 🞎 |
| keep a record of the delegation; | 🞎 |
| ensure that the delegation is regularly reviewed and updated as required to ensure it is kept current; and | 🞎 |
| the delegate must: |  |
| 1. be an executive employed by the Agency;
 | 🞎 |
| 1. be appropriately qualified or experienced to perform the delegated functions;
 | 🞎 |
| 1. use the delegation for the purpose intended; and
 | 🞎 |
| 1. act within the limits of the delegation.
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| **Revision** | **Date** | **Reference** | **Details** | **Endorsed by** |
|  |  1/07/2018 |  | First release. |  |
| 1 | 27/08/2018 | Instruction 7.2.1 | New sub-paragraph (h) inserted to describe the policy Minimum rates of pay for tip truck owner drivers on government projects. | DTF |
| 2 | 30/12/2018 | Instructions 3.2, 5.1, 6.1, 7.1, 7.2, 8.2 | Minor amendments to clarify requirements. | DTF |
| 3 | 20/05/2019 | All | Reformatted to include clause numbering. Additional non-mandatory items are not included. The location of non-mandatory items is noted in italics text as ‘Issues to consider”. | DTF |
| 4 |  2 /08/2019 | Instruction 3.4 | Clarify when a Tender Notice must be used for Selective Tenders and Limited Tenders. | DTF |