



WESTERN AUSTRALIAN INDUSTRY PARTICIPATION STRATEGY

EXEMPTION PROCESS GUIDE

1. Background

The *Western Australian Jobs Act 2017* (WA Jobs Act) allows conditional exemptions from the requirement of each prospective supplier to submit a Participation Plan (PP) when they are tendering for a WAIPS supply. These are to be granted by the Minister for State Development, Jobs and Trade (Minister for Jobs) or the delegated authority on a case by case basis.

Note: The Minister for Jobs has delegated this authority to the Deputy Director General, Industry, Science and Innovation of the Department of Jobs, Tourism, Science and Innovation (JTSI).

While a Participation Plan (PP) may be deemed unnecessary, reporting on workforce including, apprenticeships and traineeships will be a condition of the exemption.

2. Exempt Items

The examples below are illustrative of typical exemption requests. The list is not exhaustive and there will be unique circumstances pertaining to an agency and its WAIPS supply that are not covered in this list. In these circumstances further advice can be sought from the Industry Link Advisory Service (ILAS).

Classified and sensitive

Procurement that contains information requiring protection and security because it has or could have an impact on national interest, including:

- National security – protection from espionage, sabotage, politically motivated violence, promotion of communal violence, attacks on Australia’s defence system, acts of foreign interference and the protection of Australia’s territorial and border integrity from serious threats
- International relations – significant political and economic relations with international organisations and foreign governments.
- Law enforcement operations where compromise could hamper or make useless crime prevention strategies or particular investigations, or endanger personal safety
- Classified and sensitive examples include, but are not limited to: the procurement of firearms, emergency services procurement in relation to counter-terrorism.

Overseas expertise in specialised equipment

- The acquisition of specialised equipment that is not manufactured in Australia; and
- Where the acquisition is 90% or greater of the estimated contract value.
- Examples include: medical equipment such as MRI machines and some specialised industrial vehicles.



Sole source

- Where there is only one known source for supplies or services as determined by documented research.
- No other reasonable alternative source exists that meets the procurement agency's requirements.
- Only one source meets the needs of the procurement agency.

Examples include: systems/product maintenance (e.g. additional licences, updates, replacement parts); information technology; and laboratory equipment.

Must be performed in Western Australia

- Where the nature of the procurement has to be performed within Western Australia; and
- Estimated local participation is at 90% or greater.
- There is little or no variation anticipated between offers to supply.

Examples include: contract for cleaning a school or office building; contract to provide gardening services.

Must be performed overseas

- A small number of procurements are for overseas services.

Examples include: maintenance of an overseas office and tourism marketing in overseas markets.

Unique Circumstances

- Where the procurement doesn't fit one of the defined categories but the agency is able to demonstrate that there will be little or no benefit to the state to request a Participation Plan as part of the procurement process.

Common Use Arrangements (CUAs) and Agency Panel Arrangements

- Agencies must formally seek an exemption for the head agreement so that prospective suppliers will not be required to include a Participation Plan as part of their offer to establish the arrangement.

Applicants must ensure the additional information on page 2 of the exemption form is fully completed.

Refer to Case by Case exemptions guidance 1(f) in the WAIPS Operations Guide 2019 for explanation of full and conditional exemptions.

Other

- A further instance is an agency purchase of a basic utility service such as gas, water and electricity.



3. Process

When a procuring agency determines that the purchase either fits into one of the above classifications, or a PP is deemed unnecessary for other reasons, an exemption to the WAIPS may be granted at the discretion of the Minister for Jobs, via his delegated authority. The exemption will mean a procuring agency will not need to request a PP as part of their tendering process and will be able to remove the PP component of the weighted assessment. A procuring agency must complete the '*Application for an Exemption to the WAIPS*' form and send it in to ILAS for evaluation prior to going out to tender. If all the criteria are met, the application will then be forwarded to JTSI's Deputy Director General for approval (as delegated authority for the Minister for Jobs).

Identifying Exemptions

Where an agency identifies that goods and/or services that are being procured, fit into a category of exempt items, an agency may apply for an exemption to the WAIPS. To assist in identification, agencies can contact the ILAS or the Local Content Advisers (LCAs) who can assist in the verification of claims made. The verification can be included in the cover letter addressed to JTSI's Deputy Director General with the application for the exemption.

Seeking an Exemption

The completed Exemption Application form must be accompanied by a cover letter that should be addressed as follows:

Ms Linda Dawson, Deputy Director General, Industry, Science and Innovation
As Delegated Authority for the Minister for State Development, Jobs and Trade
Department of Jobs, Tourism, Science and Innovation

The cover letter must be signed by the procuring agency's delegated authority for that level of contract procurement, with the words "Delegated Authority" stated, preferably with the signature block.

A sample cover letter can be found in Appendix 2 of this document.

Both the letter and the form should be emailed only (not posted) to industrylink@jtsi.wa.gov.au . An acknowledgment email reply will be sent upon receipt of the application.

The timeframe for approval of exemption applications could vary depending on whether the Minister for Jobs or the delegated authority is approving the application. Agencies should therefore allow **15 working days** for approval from date of receipt of the completed application form by the Minister's delegated authority at the Department of Jobs, Tourism, Science and Innovation.

Assessed Applications

ILAS will inform the agency of the outcomes of their application. Where an exemption has been approved, the exemption will be published on the WA Industry Link portal. Additionally, Agencies may wish to publish exemptions on their own website. If an application is denied, the normal tendering process, including application of the WAIPS, applies.



Record keeping

To keep track of exemptions and their results, a centralised Exemption Register has been created by ILAS to record exemption data. This data will be used in the annual report to the Minister for Jobs.

4. Emergency Event

The *Emergency Management Act 2005 (WA)* s 3 defines an emergency as “the occurrence or imminent occurrence of a hazard which is of such a nature or magnitude that it requires a significant and coordinated response”.

Part 3 of the *Emergency Management Regulations 2006 (WA)* prescribes the hazard management agencies for emergency management. Of these are the following state government agencies:

- Commissioner of Police
- FES Commissioner (Department of Fire and Emergency Services)
- State Human Epidemic Controller (Department of Health)
- Agriculture Director General
- Public Transport Authority
- State Health Coordinator (Department of Health)
- Marine Safety, General Manager (Department of Transport)
- Coordinator of Energy, Public Utilities Office (Department of Treasury)

Part 5 of the *Emergency Management Regulations 2006 (WA)* prescribes the combat agencies and support organisations. Of these are the following state government agencies:

- Department of Health
- Police Force of Western Australia
- Police Service
- Department of Environment and Conservation
- Local Government
- Department for Child Protection

WAIPS does not apply to items procured during an emergency. In the event of an emergency, a declaration should be made by the Director General of the affected agency. The declaration is not required from hazard management agencies, combat agencies and support organisations listed in the *Emergency Management Regulations 2006 (WA)*. For all other agencies, the emergency declaration must:

- be addressed to the Deputy Director General, Industry, Science and Innovation of JTSI as the Delegated Authority for the Minister for State Development, Jobs and Trade;
- include a description of the emergency incident that occurred; and
- be emailed to JTSI (industrylink@jtsi.wa.gov.au) within six (6) weeks of the conclusion of the emergency event.

5. Reporting

While the exemption withdraws the need to include a PP as part of a WAIPS supply, reporting is still required for employment and training outcomes that have been achieved during the contract period.



For ease of data collection, it is recommended that agencies include a reporting clause within their contracts that requires the following reporting information (see sample report in Appendix 1) to be submitted to the agency. For contracts greater than 12 months in duration, annual reporting on the anniversary of the contract award date, or at intervals otherwise agreed in the contract, is required. A final report within 2 months after practical completion of the contract is also required.

A sample exemption reporting template is available in APPENDIX 1 of this document.



APPENDIX 1 - EXAMPLE REPORT ONLY

A Word version of the full reporting template can be requested from the Agency resource library on the Industry Link portal at;

<https://industrylink.wa.gov.au/advisory-services/services-to-state-government-agencies/resource-library>

Please provide the actual workforce (excluding apprentices and trainees) directly employed in delivering this contract.

Workforce	WA (metro)			WA (regional)			Other Australian States, Territories and New Zealand	Overseas
	M	F	O	M	F	O		
Totals								

Please provide the actual number of apprentices and trainees directly employed in delivering this contract.

Apprentices Trainees	WA (metro)			WA (regional)			Other Australian States, Territories and New Zealand	Overseas
	M	F	O	M	F	O		
Totals								

Please provide the actual percentage spend by jurisdiction at this reporting stage.

WA (Metro %)	WA (Regional %)	Other Australian States, Territories and New Zealand (%)	Overseas (%)

Definition of terms

Gender - **M** = Male **F** = Female **O** = All other individuals categorized, either by themselves or by society, as neither male nor female. **All** = all genders combined.

Workforce: Means the total number of workers directly employed on a contract. This encompasses full-time, part-time, casual employees, apprentices and trainees, workers engaged through labour hire arrangements and other employer supported employment initiatives such as cadetships and internships.



APPENDIX 2 – SAMPLE COVER LETTER

[your ref]

[date]

Ms Linda Dawson, Deputy Director General, Industry, Science and Innovation
As Delegated Authority for the Minister for State Development, Jobs and Trade
Department of Jobs, Tourism, Science and Innovation
industrylink@jtsi.wa.gov.au

Dear Ms Dawson

Re: Application for Exemption from the requirement for a Participation Plan under the Western Australian Industry Participation Strategy.

[Insert your agency's name] requests an exemption from the requirement to include a participation plan in the tender documentation for Request [insert tender request reference number].

Attached to this letter is the exemption application form for the abovementioned tender.

If there are any queries, or if you require any further information, please contact Contract Specialist, [insert name, telephone and email address of relevant Contract Specialist for the tender].

Yours sincerely

[signed by delegated authority]

[Signatory Name]

[Position Title]

[Agency Name]

As the Delegated Authority
enc.



Western Australian Industry Participation Strategy (WAIPS) Application for a Participation Plan Exemption

1 a) Agency:	1. b) Agency Contact Name:						
1. c) Agency Contact Email Address:	1. d) Agency Contact Phone:						
2. a) Tender/Requisition Reference:	2. b) Tender Name:						
3. Nature of Tender: <i>(select from below)</i> <input type="checkbox"/> Goods and/or Services <input type="checkbox"/> Housing and/or Works <input type="checkbox"/> Other (Please specify)	4. Estimated value (inc GST):						
5. Contract Coverage Location/s: <i>(select from below)</i> <input type="checkbox"/> Gascoyne <input type="checkbox"/> Mid-West <input type="checkbox"/> Wheatbelt <input type="checkbox"/> Goldfields/Esp. <input type="checkbox"/> Peel <input type="checkbox"/> Great Southern <input type="checkbox"/> Pilbara <input type="checkbox"/> Metro <input type="checkbox"/> Kimberley <input type="checkbox"/> South West <input type="checkbox"/> State-Wide	6. Estimated date of Tender: (dd/mm/yyyy) (NOTE: In submitting this application, the agency agrees that the tender will not be released before the outcome of this application is determined).						
7. Describe a brief summary of the purpose for the procurement.							
8. Why is the agency applying for an exemption to the requirement to submit a WAIPS participation plan?* <p style="text-align: center;">Select from one of the categories below:</p> <p>(Refer to the WAIPS Exemption Process Guide on WA Industry Link for an explanation of the following categories)</p> <table style="width: 100%;"> <tr> <td style="width: 50%; padding: 5px;"><input type="checkbox"/> Must be performed in Western Australia where the estimated local participation is 90% or greater.</td> <td style="width: 50%; padding: 5px;"><input type="checkbox"/> Must be performed overseas where the acquisition or service is 90% or greater of the estimated contract value.</td> </tr> <tr> <td style="padding: 5px;"><input type="checkbox"/> Sensitive or secretive goods or services</td> <td style="padding: 5px;"><input type="checkbox"/> Sole source</td> </tr> <tr> <td style="padding: 5px;"><input type="checkbox"/> Common Use Arrangement / Agency Panel Arrangement (Complete questions 11-18)</td> <td style="padding: 5px;"><input type="checkbox"/> Unique Circumstances (Please provide further details)</td> </tr> </table>		<input type="checkbox"/> Must be performed in Western Australia where the estimated local participation is 90% or greater.	<input type="checkbox"/> Must be performed overseas where the acquisition or service is 90% or greater of the estimated contract value.	<input type="checkbox"/> Sensitive or secretive goods or services	<input type="checkbox"/> Sole source	<input type="checkbox"/> Common Use Arrangement / Agency Panel Arrangement (Complete questions 11-18)	<input type="checkbox"/> Unique Circumstances (Please provide further details)
<input type="checkbox"/> Must be performed in Western Australia where the estimated local participation is 90% or greater.	<input type="checkbox"/> Must be performed overseas where the acquisition or service is 90% or greater of the estimated contract value.						
<input type="checkbox"/> Sensitive or secretive goods or services	<input type="checkbox"/> Sole source						
<input type="checkbox"/> Common Use Arrangement / Agency Panel Arrangement (Complete questions 11-18)	<input type="checkbox"/> Unique Circumstances (Please provide further details)						
9. Provide evidence or research that supports the above claim in Question 8.							
10. As a condition of this exemption, will the agency commit to requiring the contractor to report on the outcomes of the contract? (Including workforce, apprenticeships & traineeships and local sourcing) Yes / No If the answer is No, please explain the reason/s.							

*If the reason for applying for an exemption is that this procurement is an Agency Panel Arrangement or Common Use Arrangement please ensure you complete the next section of this form.

Completed applications should be sent to industrylink@jtsi.wa.gov.au with a cover letter. (Refer to the WAIPS Exemption Process Guide on [WA Industry Link](#))



All exemptions are approved by the Director General of the Department of Jobs, Tourism, Science and Innovation as the Delegated Authority for the Minister for State Development, Jobs and Trade. Approved exemptions are listed on the WA Industry Link Portal.

Agency Panel Contract or Common Use Arrangement

11. Total Contract Value (inc. GST) :	<i>Enter the total estimated contract value for the contract duration. (Including extension options if specified in the original tender). Total value should include GST.</i>
12. a) Contract duration (years) :	12. b) Extension options:
13. Estimated number of suppliers to be contracted:	
14. How will the panel be established? (eg. What process will be used in panel set up?)	
15. Provide an explanation of how the panel will operate: (eg. How the panellist will be selected, detail the buying rules?)	
16. Will there be any regionally based suppliers on the panel? Yes / No If the answer is Yes, please outline any specific provisions that will be used to support sourcing from these suppliers (ie. use of regional price preferences). If the answer is No, please explain why.	
17. Is it possible that the value of an individual procurement from this arrangement might exceed a WAIPS threshold? Yes / No	
18. For any individual procurement that meets the WAIPS threshold criteria; and where the panel buying rules specify that the procurement must go to competitive tender (either from within the panel members or open), a Participation Plan should be included as a weighted criteria in the selection process. Will you commit to the inclusion of a Participation Plan? Yes / No If the answer is No, please explain why.	