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Part 3 General principles for procurement

8 Non-discrimination

Government agencies, subject to this Direction, must not discriminate against any supplier due to its degree of foreign affiliation or ownership, location, ~~or the origin of its goods and services.~~

9 ~~Offsets prohibited~~

- (1) ~~A government agency must not seek, take account of, impose or enforce any offset at any stage of a procurement.~~

~~**Note.** Clause 6 (2) and Schedules 2 and 3 provide for exemptions from the provisions of this Direction. For example, the prohibition against using offsets does not prevent a government agency from implementing a preferencing arrangement to benefit small and medium enterprises (see item 3 of Schedule 3).~~

- (2) ~~In this clause, an *offset* is any condition or undertaking that requires the use of domestic content, a domestic supplier, the licensing of technology, technology transfer, investment, counter-trade or similar actions to encourage local development in Australia or to improve Australia's balance of payments accounts.~~

10 Third party procurement

A government agency may arrange for another party to make a procurement of goods and services on its behalf, but only if the government agency ensures that the provisions of this Direction relating to the procurement are complied with.

11 Government agency not to avoid obligation of this Direction

A government agency must not use contract extension options, cancel a procurement, or modify or terminate awarded contracts in order to avoid the operation of this Direction.

12 Basis to exclude suppliers from procurement

- (1) A government agency may exclude a supplier from a procurement if the agency has a reasonable belief regarding the following:
- that the supplier is bankrupt or insolvent,
 - that the supplier has made one or more false declarations,
 - that there has been a significant deficiency or persistent deficiencies in the performance by the supplier of any substantive requirement or obligation under a prior contract,
 - the Independent Commission Against Corruption (or an equivalent body in a jurisdiction in Australia), within the previous 10 years, has made a finding or has been of the opinion that the supplier has engaged in corrupt conduct,
 - that the supplier has failed to pay taxes,
 - that the supplier has been convicted of an offence punishable by imprisonment for a term of 2 years or more, or by a fine of \$200,000 or more,
 - that the supplier has been found guilty of professional misconduct or unprofessional conduct in a jurisdiction in Australia.
- (2) In this clause, a reference to the supplier includes, if the supplier is a body corporate, a director and any other person involved in the management of the affairs of the body corporate.