

KNOWLEDGE CENTRE

Exclusions

EX:2

Relevant Facts or Questions Asked

A procuring entity sought guidance based on the following representation, whether:

- I. A public body (for e.g. a public school) who wishes to engage a third party supplier by direct contracting to let a particular space for the operation of a tuck shop/commissary for the benefit of the school, is required to adhere to the public procurement guidelines.
- II. The value of the contract will be over \$500,000.00 per annum.

Issues Arising

Exclusion provisions in existing procurement law dealing with matters of rent/lease of land or rights in relation thereto.

Advice

1. To place this matter into its proper context the definition of procurement in current law is useful. The Public Procurement Act, 2015 defines procurement to mean:-

"..the acquisition of goods, works or services by any means, including, where applicable, purchase, rental, lease or hire-purchase, and the acquisition of works, and consulting or other services;"

2. Based on our understanding of the issue the lessor will be the recipient of monies from the lessee under the arrangement for the space designated for operating the tuck shop. This type of arrangement is not covered under the scope of public sector procurement law or policy.



3. Furthermore, rental/lease of land or any immovable property is excluded from the provisions under existing public procurement law more specifically the First Schedule of The Public Procurement Act, 2015.
4. Existing policy advocates that where procuring entities or public bodies for that matter, contemplate the pursuit of these types of business arrangements, they are at liberty to refer to industry practice or utilise their own procedures.

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