



**Government
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Board

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Panel Contracts Guideline

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Overview

This guideline provides information and practical advice for public authorities when establishing panel contracts or selecting suppliers from a panel contract. In reading this guideline, procurement practitioners will gain an understanding of:

- what a panel contract is
- the benefits of establishing a panel contract
- when a panel contract is appropriate
- the key elements of an acquisition plan for establishing a panel contract
- appropriate secondary procurement processes related to a panel contract.

Object of the Act

The object of the *State Procurement Act 2004* (the Act) is to advance government priorities and objectives through a system of procurement for public authorities directed towards:

- a) obtaining value in the expenditure of public money
- b) providing for ethical and fair treatment of participants
- c) ensuring probity, accountability and transparency in procurement operations.

The establishment of panel contracts and the selection of panel members through a secondary procurement process is to have regard to, and be consistent with, these principles.

Public Authority Requirements

The requirements outlined in this guideline are to be addressed by public authorities when establishing a panel contract or when purchasing goods and services in accordance with the specified secondary procurement process.

The key requirements, as detailed throughout this guideline, are summarised as follows:

Establishing a Panel Contract

Public authorities establishing a panel contract are required to:

- adhere to the requirements of the *Acquisition Planning Policy* in undertaking the procurement
- determine the total anticipated value of the panel contract before obtaining approval to commence the procurement process
- make no commitment to undertake a specified volume of purchases during the panel contract period
- ensure, where applicable, that mandating the use of the contract has been approved by an appropriate authority (e.g. Cabinet)
- ensure there is verifiable demand for the anticipated goods or services for the life of the panel contract and not raise supplier expectations of a higher volume of work than is actually available
- determine the rules for selecting, adding or removing panel members
- apply the relevant requirements of the Government's *Industry Participation Policy*
- inform all relevant users and panel members of the secondary procurement process to be followed

- determine, where relevant, any reporting and data collection requirements and advise relevant parties.

Information to be included in a Panel Contract

Public authorities establishing a panel contract are required to ensure the panel contract includes:

- a list of public authorities covered or exempted by the panel contract
- whether use of the contract is mandatory or optional
- the secondary procurement processes to be utilised for buying from the panel contract
- any miscellaneous issues relevant to the utilisation of the panel contract (e.g. regional considerations).

Selecting from a Panel Contract

Public authorities subject to the panel contract are required to:

- only purchase goods and services from the relevant panel contract in accordance with the specified secondary procurement process unless their participation has been deemed as optional or they have been granted an exemption by the establishing authority
- ensure relevant procurements are approved through the public authority's normal approval processes
- apply the relevant requirements of the Government's *Industry Participation Policy*.

Contract Management

Public authorities managing a panel contract are required to:

- monitor supplier leakage from the panel contract to ensure that only suppliers from the panel contract are utilised
- comply with any reporting and data collection requirements that may apply to the contract.

Ethical Practices

Public authorities establishing a panel contract are required to:

- ensure that any exemptions from using the panel contract do not infringe the contractual and legal obligations of the panel contract
- ensure that controls are in place to prevent unauthorised access to, and divulging of, commercial-in-confidence contract information (except where allowed for in government policy or legislation).

What is a Panel Contract?

A panel contract (also referred to as a panel arrangement) is a contractual arrangement established with at least two suppliers for the anticipated provision of goods or services, as and when required over a specified period of time. The panel contract contains standard terms and conditions under which the goods or services will be provided by panel members. A panel contract may be established at a public authority, lead agency or across government level.

When is a Panel Contract Appropriate?

The decision to establish a panel contract should be considered when developing an acquisition plan. Panel contracts are one of various possible procurement strategies that public authorities can choose from. In many cases, public authorities will prefer to adopt a sole supplier contract. Once all available procurement options are considered, a decision can be reached as part of the acquisition plan to ascertain which strategy is the most appropriate to achieve the public authority's procurement objectives.

A panel contract may be appropriate when:

- there are a number of suppliers who can provide the good or service
- there is a strong and ongoing demand for the good or service
- the procurement requirement cannot be adequately predicted
- support can be secured from a sufficient number of public authorities prepared to commit to an exclusive arrangement with a panel of providers (where the panel is intended for the use of more than one public authority)
- the volume of work may be too large for one supplier to undertake
- there is an advantage in having a choice of suppliers (e.g. to avoid potential conflicts of interest, maintain competitive tension).

Benefits of Panel Contracts

Panel contracts can produce significant savings and benefits to public authorities including:

- improved quality, service and prices through the combined purchasing leverage (either across multiple public authorities or business units within a public authority)
- cost savings by avoiding duplication in researching and approaching the supply market through preparing market approach documents, inviting and evaluating offers and sourcing goods and/or services
- greater choice through access to multiple suppliers
- fast and streamlined access to suppliers
- standardisation and increased consistency in procurement processes and documentation
- reduced costs for suppliers by having to respond to fewer invitations to supply
- predetermined contract terms, conditions and performance measures applying over a series of different requests
- competitive tension over the period of the contract
- minimised contract set up costs through the use of a standard common contract arrangement
- opportunities for better strategic relationships with suppliers.

Irrespective of whether the panel contract is established at a public authority, lead agency or across government level, any of the benefits listed previously may apply.

Public authorities should note that whilst this guideline outlines the issues related to establishing panel contracts, the intention is not to promote panel contracts over other more effective or relevant procurement strategies. Panel contracts are not appropriate for all situations and should only be considered where the benefits are clearly articulated and understood.

Disadvantages associated with panel contracts should always be identified, documented and considered in the acquisition planning process. Disadvantages may include increased contract management reporting, billing and payment costs, and additional administrative, communication and red tape requirements on suppliers and/or public authorities.

Establishing a Panel Contract

A panel contract can be established through:

- an open market approach
- a selective market approach with suppliers following an invitation for expressions of interest
- a selective market approach with suppliers sourced from a pre-qualified list or other form of common accreditation.

Panel contracts can be established by:

- a public authority, for its exclusive use
- a public authority, as a lead agency contract on behalf of a consortium of public authorities
- a public authority, as an across government strategic panel contract.

The following key issues are to be considered when establishing a panel contract.

Value of Contract

The total anticipated value of a panel contract:

- is to be determined before approval to commence the procurement process is obtained
- can be calculated by analysing previous expenditure or by forecasting expenditure for a similar period of time.

No commitment is to be made to undertake a specific volume of business activity during the panel contract period. However, there is an expectation that all parties will act in good faith and that public authorities do not raise supplier expectations of a higher volume of work than is actually available.

When establishing lead agency panel contracts, there needs to be verifiable demand for the anticipated goods or services for the life of the panel contract. Where appropriate, a commitment should be obtained in writing from those public authorities prepared to procure from a lead agency panel contract.

Number of Panel Members

Panel contracts are usually established with a finite number of suppliers for a predetermined period of time, however there is no 'correct' number of panel members. In some cases 2 or 3 will be appropriate and in others 4, 5 or more.

The number of panel members depends on many factors, including the nature of the goods and services required, the supply market maturity and capacity and the anticipated volume of work. An estimate of the number of suppliers on the panel can be determined in the acquisition planning phase and finalised at the conclusion of the supplier selection phase.

Supplier Selection and Contract Operation

The rules for selecting suppliers from the panel contract and for replacing or removing suppliers **must** be clearly documented in the acquisition plan.

Panel contracts may stipulate the right to add suppliers to the panel when deemed appropriate (e.g. changing circumstances, demographics, obsolescence or increased service requirements), although in normal circumstances, suppliers are not added to a panel contract until the expiration of the contract period. Where new suppliers are added to the panel, the selection needs to be subject to the same rigorous evaluation process as adopted for the original suppliers.

All panel contracts **must** provide a right to remove panel members or goods/services as circumstances arise (e.g. insolvency, failure to meet performance requirements).

Pre-qualified lists

A panel contract differs from a pre-qualified list (also referred to as a multi-use list). Suppliers placed on a pre-qualified list have met the preliminary standard criteria and will be required to meet other evaluation and performance criteria during any formal procurement process subsequently undertaken.

The key differences are that a pre-qualified list:

- contains nothing that can be interpreted as a contract between the public authority and suppliers on the list
- does not have a finite number of suppliers who may qualify for inclusion
- is updated on either a continuous or annual basis, adding new suppliers who meet the pre-qualification criteria
- is used as a basis for undertaking further open or selective procurement processes (including establishing a panel contract).

Industry Participation Policy

The Government's *South Australian Industry Participation Policy* (IPP) outlines various requirements to be applied when undertaking procurements. These are documented below in relation to the establishment and use of panel contracts.

Further guidance and detail are available in the *South Australian Industry Participation Policy* published by the Office of the Industry Advocate (OIA).

*For panel contracts less than \$4 million (\$1 million in Regional SA) public authorities **must** ensure that an ECT is completed for competitive secondary procurement processes above \$33,000 unless otherwise exempted by the OIA.*

*For panel contracts equal to or greater than \$4 million (\$1 million in Regional SA), public authorities **must** ensure that:*

- *a Declaration of Intent is completed as part of the initial panel tender response*
- *an ECT is completed for competitive secondary procurement processes above \$33,000 and less than \$4 million (\$1 million in Regional SA) unless otherwise exempted by the OIA*

- a Standard IPP Plan is completed for any competitive secondary quotes equal to or greater than \$4 million (\$1 million in Regional SA).

For panel contracts with a limited number of suppliers and expected volumes for use are above \$50 million over the panel lifespan, public authorities **must** ensure that a Tailored IPP Plan is completed.

The Government's *South Australian Industry Participation Policy* (IPP) also requires public authorities to:

- where requested, assist suppliers to complete the ECT or direct them to the OIA if required
- forward a list of all suppliers and any IPP submissions to the OIA for assessment after the invitation closing date
- conduct the assessment for any offers that seek the submission of an ECT or IPP Plan (as scored and assessed by the OIA) and incorporate the result into the evaluation process
- where relevant, ensure on contract award that the commitments made by the successful supplier in their submitted IPP Plan become conditions of the contract.

Acquisition Planning

It is noted that it is not always possible to determine whether a procurement process will lead to a panel arrangement until after the supplier selection process is complete.

Where it is likely that a procurement process will lead to a panel arrangement, the following checklist highlights aspects of the acquisition planning process that are particularly relevant to planning a panel contract:

- key objectives and justification for establishing a panel contract
- anticipated expenditure and the term of the panel contract
- documented support for establishing a lead agency or across-government panel contract
- the public authorities or government entities that are party to the panel contract
- the nature of the goods and/or services the panel contract will provide for
- whether use of the panel contract is mandatory or optional
- processes for addressing supplier complaints and resolving disputes
- the likely or possible panel contract model including term, size and structure
- the ability to add or remove suppliers from the panel under appropriate circumstances
- the secondary procurement processes to be utilised for selecting suppliers from the panel
- any miscellaneous issues (e.g. geographical) related to establishing the panel contract.

The *Acquisition Planning Policy* outlines the requirements for undertaking an acquisition plan related to establishing a panel contract.

Information to be Included in a Panel Contract

The scope and nature of panel contracts will vary in terms of their product or service offerings and in the level of detail. For example, a panel contract for personal computer equipment may contain more detailed and easily specifiable product descriptions than a

panel contract for software development. Some panel contracts may include a set price or schedule of rates. Others may include a catalogue outlining the various products covered by the contract. The circumstances of each procurement will determine the panel contract outcome.

It may not be possible to fully specify the details of the goods or services required in all cases. These details may have to be negotiated between the supplier and the public authority during the secondary procurement process. This may include prices (where fixed maximum pricing or rates have been specified), delivery times and service levels. It may be difficult to specify every possible contingency when establishing the panel contract.

However, all panel contracts will include:

- a list of public authorities covered or exempted by the panel contract
- whether use of the contract is mandatory or optional
- the type of secondary procurement processes to be utilised for buying from the panel contract
- any miscellaneous issues relevant to the utilisation of the panel contract (e.g. regional considerations).

Who Can Be Covered By a Panel Contract?

A panel contract **must** clearly specify the parties to the contract and whether these parties are required to utilise the panel on a mandatory or optional basis. This may be for example, the whole of government (including statutory authorities), all public authorities subject to the Act, specific public authorities, or a panel contract established by a public authority for its exclusive use. Coverage could also include non-government organisations subject to approval by the authorising authority. The intentions of the panel contract need to be clear and unambiguous.

The decision to mandate the use of a panel contract **must** be made by the appropriate authority. This may be Cabinet, the Board or the principal officer of the public authority.

Parties to a mandatory panel contract are required to purchase from this panel contract unless specifically granted an exemption by the approving authority. Such approval should only be granted in exceptional circumstances where it can be clearly demonstrated that there is a significant need to do so. Exemptions are not to infringe the contractual and legal obligations of the panel contract.

The establishment of panel contracts and strategic across government contracts in regional areas should consider regional needs and provide, where appropriate, opportunities for local suppliers or agents where such suppliers or agents exist.

How Do You Select a Supplier From a Panel?

A secondary procurement process is one undertaken by a public authority to select a supplier from a panel, for a particular procurement need. The secondary procurement process undertaken should be as simple and efficient as possible and the effort undertaken should reflect the benefits gained.

When undertaking the process of acquisition planning leading to the establishment of a panel contract, procurement practitioners are required to specify the appropriate secondary

procurement processes applicable for selecting suppliers from the panel. The type of secondary procurement process established needs to be commensurate with the complexity, value and risk of the proposed procurement and transactions. Procurements with a higher complexity and value profile will require a more rigorous secondary procurement process.

The selection of suppliers through secondary procurement processes can be determined in a variety of ways. The following (not in any particular order) examples can be considered according to how it supports the particular procurement strategy being considered:

- a non-competitive basis (e.g. directly obtaining a quote from any one panel member)
- a competitive basis (e.g. obtaining a quote or assessing technical/commercial characteristics from several or all panel members)
- an equal division of work basis
- a monetary basis (e.g. obtaining three quotes for higher level values)
- a rotational basis
- a geographic basis
- a preferred supplier basis (e.g. one supplier is given the opportunity to undertake the procurement first, then other suppliers approached only if required).

Individual procurements undertaken from panel contracts will tend to be numerous in number and low in their individual dollar value. For example, whilst a panel contract may have an overall anticipated value of \$500,000, this may comprise 50 individual procurements, with an average spend of \$10,000.

If appropriate, the secondary procurement process can also specify an upper limit for any individual procurement undertaken from the panel contract, for example, \$100,000 per procurement.

Procurements undertaken through a secondary procurement process (as outlined in the panel contract) **must** be approved through the public authority's normal approval processes. Where the value of the procurement exceeds the public authority's procurement authority, the principal officer can approve the procurement without reference to the Board (unless not allowed for in the panel contract).

All panel members need to be informed of the secondary procurement processes for how public authorities will select suppliers from the panel contract.

Contract Management

Like all procurement contracts, panel arrangements should be effectively managed to ensure the objectives and intended benefits are actually realised during the period of the panel contract. Effective contract management will assist in:

- ensuring panel supplier performance;
- ensuring accountability and outcomes are achieved;
- ensuring continuous improvement; and
- planning and developing future purchasing strategies.

In particular, attention should be paid to monitoring the outcomes of the secondary procurement processes to ensure that suppliers have been utilised in accordance with the intended panel contract objectives and that where mandatory, only suppliers from the panel contract are utilised (i.e. monitoring supplier leakage).

The public authority should also consider any reporting and data collection requirements (to be undertaken by the supplier or the contract user) to assist in monitoring the contracts effectiveness and usage patterns. Where this is required, the public authority needs to clearly stipulate the reporting and data collection requirements in the acquisition plan, for consideration by the approving authority.

Panel suppliers can be particularly aggrieved where they are not provided opportunities to provide goods or services as originally anticipated or where they are required to undergo further evaluation processes that were already undertaken in the original evaluation process. It is therefore important that where possible, suppliers are given the ability to gain work from the panel contract on a fair and reasonable basis, except where other factors (for example, geographic or specific category specialisations) determine the work received.

Ethical Practices

A person having access to a panel contract is not permitted to allow any unauthorised person to have access to, or divulge to any unauthorised person, the commercial-in-confidence contract information.

The practice of using the information (e.g. prices) from a panel contract as a negotiating point with other panellists or suppliers is unethical and unacceptable.

It is also not acceptable for public authority buyers to accept a panellist's special offers for value-added services if these fall outside the scope of the contract. If it is considered that these additional goods or services are of benefit to the public authority, the offer should be considered on its own merits as an unsolicited proposal in line with the *Market Approach and Contract Documents Guideline*.

Further Information

State Procurement Board Secretariat
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Related Policies and Guidelines

SPB Acquisition Planning Policy
SPB Risk Management Guideline
SPB Contract Management Policy
SPB Board Procurement Reporting Policy
SPB Market Approach and Contract Documents Guideline
SPB Supplier Selection Policy
SA Government Industry Participation Policy
DPC Circular PCO33 Industry Participation Policy