

Panel Contracts Guideline

Purpose

This Guideline provides information and practical advice for public authorities when establishing a panel arrangement (contract) and selecting suppliers from an existing panel contract. In reading this Guideline, public authorities will gain an understanding of:

- what is a panel contract
- the difference between a panel contract and a multi-use or prequalification list
- the benefits of establishing a panel contract
- key considerations when establishing a panel contract, including establishing panel rules and conducting secondary procurement processes.

What is a panel contract?

A panel contract is a form of standing offer, established with multiple suppliers for the anticipated provision of goods or services as and when required over a specified period of time.

Under panel contracts, a contract exists between a public authority and each supplier on the panel detailing:

- the type of goods or service the supplier will provide
- the set/indicative price for the goods or service
- period of operation of the panel, including a set end date
- the standard terms and conditions under which the goods or services will be provided by suppliers on the panel (i.e. panel members).

A secondary contract (or purchase order) is formed under a standing offer each time an entity purchases goods or services under the panel contract.

A panel contract may be established:

- by a public authority for its own use (i.e. agency-based or single-agency panel)
- by a lead public authority for use across multiple public authorities (i.e. multi-agency panel). For example, a lead public authority may manage contracts for food provisions for use in hospitals, government schools and correctional facilities
- by a lead agency where there is an across-government need (i.e. an across-government panel). For example, Procurement Services SA implements panel contracts for use across-government for services such as temporary staff, travel, stationery and various ICT needs.

The purpose of a panel contract is to achieve strategic outcomes and improved value for money through:

- improved quality, service and prices by leveraging combined purchasing power

Panel Contracts Guideline

(for multi-agency and across-government panels)

- greater choice and scope of goods and/or services through access to multiple suppliers
- fast and streamlined access to required goods and/or services
- cost savings by avoiding duplication in researching and approaching the supply market
- standardisation and increased consistency in procurement processes and preparing market approach documentation and inviting and evaluating offers
- 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 (standing offer)
- opportunities for better strategic relationships with suppliers.

Multi-use lists

A multi-use list (also referred to as a pre-qualification list) differs from a panel contract. A multi-use list simply comprises a list of suppliers who have met an established set of broad criteria (i.e has relevant experience and holds necessary licenses) and are eligible to compete in subsequent procurement processes.

Public authorities do not have a contract in the form of a standing offer with suppliers on a multi-use list. Suppliers on a multi-use list would be required to meet more stringent evaluation and performance criteria during a subsequent procurement process in order to be contracted to deliver the required goods and services.

Further guidance on multi-use lists is currently under development and will be made available to public authorities in due course.

Considerations when establishing a panel contract

Panel contracts are not appropriate for all situations and should only be considered where the benefits are clearly established.

Panel contracts are of most benefit to cover goods or services that are purchased regularly, across user groups, as they provide economies of scale through aggregation of demand, streamlining and reducing costs of procurement processes. The costs of establishing a panel can be offset by the efficiencies of being able to order from the panel.

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

Panel Contracts Guideline

- support can be secured from a sufficient number of public authorities prepared to commit to an exclusive arrangement with a panel of suppliers (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, meet the requirements of a broad specification of requirements, or geographical coverage).

Planning the establishment of a panel contract

The decision to establish a panel contract should be determined as part of the acquisition strategy.

A key consideration when determining the benefit of aggregating demand and establishing a panel contract, is the impact on suppliers, including local business and small to medium enterprises. It should be determined whether panel arrangements unfairly disadvantage supply market participants. Consideration should also be given to how a panel may operate to maximise participation of all suppliers, competition, and allow local businesses to participate (for example, by fulfilling smaller parcels of work).

Risks associated with panel contracts and multi-use lists should be identified, documented, considered and addressed in the approval to approach the market. Risks may include adverse impacts on small or regional businesses (through aggregating demand), increased contract management reporting and billing and payment costs.

Coverage and Mandate

A panel contract should clearly specify the parties to, and eligible end-users of, the contract. This may for example be the whole of government, specific public authorities or a panel established by a public authority for its exclusive use. Coverage could also include non-government organisations subject to approval by the public authority (e.g. a public authority allowing non-government organisations to utilise a panel contract to supply food provisions at their not-for-profit aged-care facilities).

The intended end-users of the panel contract should be unambiguous and communicated to suppliers in market approach and contract documentation.

The decision to mandate the use of a panel contract must be made by the appropriate approving authority, in accordance with the *Procurement Planning Policy*.

Where mandated, end-users are required to purchase from a panel contract unless specifically granted an exemption by the approving authority (or delegated authority,

Panel Contracts Guideline

where applicable). 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. Exemption processes should be established and clearly communicated to end-users.

Number of suppliers

Panel contracts are usually established with a limited number of suppliers for a predetermined period of time. However, there is no 'correct' number of panel members. When determining the optimal number of suppliers on a panel, consider:

- the scope of the goods and/or services required
- market dynamics (the maturity and capacity of the supply market)
- the anticipated amount/value of goods or services to be supplied
- offering end-users a choice of suppliers
- the type and breadth of goods and services and whether individual suppliers can fulfil all requirements
- the cost to the suppliers participating in the panel contract in relation to the estimated value of work obtained
- the cost of managing the panel arrangement.

An estimate of the number of suppliers on the panel can be determined in the acquisition strategy and finalised at the conclusion of the approach to market.

'Open' versus 'closed' panel contracts

A panel may be 'open' or 'closed' to the addition of new suppliers throughout the term of the panel contract. Where the number and selection of panel members contracted through a panel is fixed for the contract term, this is commonly referred to as a closed panel. If the panel contracts (or panel rules) stipulate the right to add suppliers to the panel when deemed appropriate (e.g. changing circumstances, demographics, obsolescence or increased service requirements), this is called an open panel.

Open panel arrangements may be appropriate where:

- the need is broad
- the period of the arrangement is particularly long
- prices or rates are indicative and may fluctuate
- regional or area-based suppliers are needed to ensure responsiveness
- there is diverse expertise or a large number of suppliers in the marketplace
- the market is emerging or immature, and there is a likelihood of new entrants and changes over time
- new products, providers and technologies are constantly emerging

Panel Contracts Guideline

- there is a strong potential for government purchasing power to influence the market, which would be restricted if the arrangement was closed to new entrants.

Irrespective of whether a panel is open or closed, all panel contracts should provide, if applicable, a right to remove panel members or goods/services as circumstances arise (e.g. insolvency, failure to meet performance requirements).

Drafting the panel contract

The *Sourcing Policy* provides an overview of the standard government agreement templates that have been developed for public authorities to use when sourcing goods and services. The suitability for use of these agreements should be based on the applicable complexity, value and level of risk.

All panel contracts should 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 applied when buying from the panel contract¹
- any miscellaneous issues relevant to the use of the panel contract (e.g. regional considerations).

If the *Standard Goods and Services Agreement* is used for a panel contract, then the 'non-exclusivity' special conditions clause should be added. This clause is available from the *Special Conditions Clause Bank*.

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.

Panel Rules and Secondary Procurement Processes

Establishing rules for purchasing from suppliers on a panel

All panel arrangements are required to have a set of 'panel rules' that are established by the lead public authority, and approved by the approver of the procurement outcome (i.e. purchase recommendation, if applicable) in accordance with the *Sourcing Policy*.

Panel rules should provide clear guidance for public authorities and end-users, including:

- scope, coverage and mandate of the panel, including a list of public authorities

¹ See the section below for further details on secondary procurement processes.

Panel Contracts Guideline

- covered or exempted by the panel contract
- how to access the panel contracts (i.e. where to find panel contract details)
- the secondary procurement process, including how to purchase goods/services from a panel member(s)
- if/how new suppliers can be added to the panel after the panel has been established
- any other key information related to the use of the contract.

Where new suppliers can be added to the panel, the selection process should be subject to the same rigorous evaluation process as adopted for the original suppliers.

Establishing the secondary procurement process

For the purpose of *Treasurer's Instruction 18 Procurement*, a 'secondary procurement process' means a purchase from an established panel of suppliers conducted in accordance with the approved panel rules. In simple terms, this is generally a procurement process undertaken for the purchase of goods or services from a panel member(s), subsequent to the procurement process undertaken to establish the panel.

It is expected that a comprehensive evaluation process would have been undertaken to establish the panel contract, with contractual terms of the standing order defined at that sourcing stage. Therefore, the secondary procurement process should be as simple and streamlined as possible, for suppliers and end-users alike.

Suppliers should not be required to unnecessarily duplicate information previously provided in the procurement process to establish the panel.

When establishing the panel rules and secondary procurement process, public authorities have the ability to set:

- the minimum number of panel members required to be approached (often based on value, risk and/or complexity thresholds)
- how panel members will be selected to be approached and given the opportunity to provide goods or services on a fair and reasonable basis²
- how panel members will be approached (i.e. market approach documentation)
- approval requirements to approach and engage panel members to purchase the required goods and services from.

Where the panel rules are silent on matters covered above or any other matters covered by policy, the PSSA procurement policies are to be applied.

The secondary procurement process must uphold standards of probity.

² This may not be applicable where other factors (for example, geographic or specific category specialisations) determine the work received.

Panel Contracts Guideline

Undertaking a secondary procurement process

Public authorities subject to the panel contract are required to:

- purchase goods and services in accordance with the specified secondary procurement process established, unless granted an exemption by the establishing (or lead) public authority
- ensure relevant procurements are approved through the requisite approval processes (this should be the public authority's normal approval processes if the approved panel rules do not specify otherwise)
- apply the relevant requirements of the Government's South Australian Industry Participation Policy (SAIPP), as set out below.

South Australian Industry Participation Policy

Public authorities and private parties contracting to the Government of South Australia are required to comply with the SAIPP and SAIPP Procedural Guidelines.

The SAIPP and SAIPP Procedural Guidelines outline various requirements to be applied when undertaking procurements, including establishing and purchasing from a panel contract. Further guidance on the SAIPP is available on the Office of the Industry Advocate's website.

Contract Management

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

The public authority should establish reporting and data collection requirements (to be undertaken by the supplier or the panel contract end-user) to assist in monitoring the contract's effectiveness and usage patterns. Where this is required, the public authority should clearly stipulate the reporting and data collection requirements in the approval to approach the market.

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 authorities to accept a panel member's special offers

Panel Contracts Guideline

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 *Unsolicited Proposals Schedule*.

