

Across-Government, Multi-Agency and Panel Contracts Guideline

Purpose

This Guideline provides information and practical advice for public authorities when establishing, or selecting suppliers from an across-government, multi-agency or agency-based panel contract or multi-use list. In reading this Guideline, public authorities will gain an understanding of:

- what a 'panel contract' and 'multi-use list' is;
- the benefits of establishing a panel contract or multi-use list;
- key considerations when establishing a panel contract or multi-use list, including establishing and applying secondary procurement processes.

While this Guideline outlines benefits and considerations when establishing panels and multi-use lists, the intention is not to promote these arrangements over other procurement strategies. Panel contracts and multi-use lists are not appropriate for all situations and should only be considered where the benefits are clearly established.

What is a panel contract and multi-use (pre-qualified) list?

Panel Contracts

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 process by which the entity will procure the goods or service from the supplier, including any further secondary procurement process for competition between panel members, where appropriate; and
- the standard terms and conditions under which the goods or services will be provided by panel members.

A contract is formed under a standing offer each time an entity purchases goods or services under the panel arrangement.

A panel contract may be established:

- by a public authority for its own use (i.e. 'agency-based');
- by a 'lead' public authority for use across multiple public authorities (i.e. 'multi-agency'). For example, SA Health implements and manages contracts for food provisions for use in hospitals, government schools and correctional facilities; or

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- by a 'lead' agency where there is an across-government need. For example, Procurement Services SA implements panel contracts for use broadly across-government for services such as temporary staff, travel, stationery and various ICT needs.

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
- 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, meet the requirements of a broad specification of requirements, or geographical coverage).

Whether established for use by one or multiple public authorities, or more broadly across-government, panel contracts aim to achieve strategic outcomes and improved value for money through:

- improved quality, service and prices through the combined purchasing leverage;
- 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 order); and
- opportunities for better strategic relationships with suppliers.

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Multi-use lists

A multi-use list (also referred to as a pre-qualified list) differs from a panel contract. A multi-use list merely comprises a list of suppliers who have met an established set of criteria and be required to meet other evaluation and performance criteria during any formal procurement process ('secondary procurement process') subsequently undertaken.

The intent of pre-qualification is to give confidence that suppliers invited to submit an offer have some relevant capability. It reduces the risk for buyers carrying out procurement activity and minimises the administrative burden of repeatedly approaching the open market for each individual procurement requirement.

A multi-use (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
- can be updated periodically to add new suppliers who meet the pre-qualification criteria¹
- is used as a basis for undertaking further open or selective procurement processes (including establishing a panel contract).

Prequalifying suppliers on a multi-use list can:

- provide an early indication of players in the market with the potential capability and capacity to satisfy the requirements of a category of procurement activity;
- streamline supplier selection processes by applying consistent repeatable processes (forms, templates, notification, etc.);
- better manage risks for buyers who have background information on potential suppliers;
- reduce costs for suppliers by not having to prepare a detailed capability and capacity submission for each and every procurement opportunity;
- inform suppliers of potential supply opportunities; and
- drive continuous improvement by refreshing the pre-qualification criteria and pool of suppliers.

Considerations when establishing a panel contract or multi-use list

Planning considerations

The decision to establish a panel contract should be determined when developing an

¹ Refer to the *International Obligations Guideline* for further information about applicable FTA and WTOGPA considerations

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acquisition plan. Panel contracts are one of various possible procurement strategies that public authorities can select. 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 key consideration when determining the benefit of aggregating demand and establishing a panel contract, is considering the impact on suppliers, including local business and small to medium enterprises. It should be determined whether panel arrangements unfairly disadvantage supply market participants, and consideration should 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 acquisition planning process. Risks may include adverse impacts on small or regional businesses (through aggregating demand), increased contract management reporting, billing and payment costs, and additional administrative, communication and red tape requirements on suppliers and/or public authorities.

Public authorities establishing a panel contract or multi-use lists are required to:

- adhere to the requirements of the South Australian Government Procurement Framework and South Australian Industry Participation Policy and Procedural Guidelines
- determine the total estimated value of all potential secondary procurement processes under the proposed panel contract or multi-use list before obtaining approval to commence the procurement process
- ensure, where applicable, that establishing the arrangement is supported across-government through a consultative process with affected public authorities;
- ensure, where applicable, that mandating use of the arrangement has been approved by an appropriate authority², and communicated with end-users
- make no commitment to undertake a specified volume of purchases
- 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 (through a secondary procurement process), adding or removing suppliers, and communicate this in market approach

² In accordance with the *Procurement Planning Policy*, a mandated across-government contract must not be established without approval from the Treasurer or Cabinet.

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documentation

- inform all relevant end-users and suppliers of the secondary procurement process to be followed
- determine contract management requirements and, where relevant, any reporting and data collection requirements and advise relevant parties.

Coverage and Mandate

A panel contract should clearly specify the parties to, and eligible end-users of, the contract.

This may be for example, the whole of government, 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 public authority (e.g. SA Health allowing non-government organisations to utilise the panel contract to supply food provisions at their aged-care facilities). The intended end-users of the panel contract need to be made clear and unambiguous, and communicated in market approach and contract documentation.

The decision to mandate the use of a panel contract must be made by the appropriate approving authority³. Where mandated, end-users are required to purchase from a panel contract unless specifically granted an exemption by the approving authority (or delegated authority, 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 finite 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 contract, 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

³ In accordance with the *Procurement Planning Policy*

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- estimated value of work obtained; and
- the cost of managing the panel arrangement.

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.

Adding suppliers to a panel or multi-use list

While the specific suppliers contracted through a panel is usually fixed for the contract term (sometimes referred to as a 'closed' panel), 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). 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.

'Open' arrangements may be appropriate when:

- the requirement 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;
- 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 must provide a right to remove panel members or goods/services as circumstances arise (e.g. insolvency, failure to meet performance requirements)⁴.

Multi-use lists are usually open, allowing suppliers who meet the set standards to be added periodically. Public authorities should ensure compliance with Free Trade Agreements when determining the process and frequency for adding suppliers to multi-use lists. Refer to the *International Obligations Guideline* for further information on relevant Free Trade Agreements.

⁴ In accordance with the *Sourcing Policy*

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Establishing rules for selecting suppliers from a panel or multi-use lists ('secondary procurement processes')

Where a panel, or multi-use list is proposed, the process for selecting suppliers from the panel or list ('secondary procurement process') must be clearly documented in the acquisition plan and market approach documentation⁵. Clear guidance for end-users should also be provided to public authorities or business units accessing the arrangement.

Given that a comprehensive evaluation process will have been undertaken to establish a panel contract, and contractual terms of the standing order defined, secondary procurement processes 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.

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.

As multi-use lists provide a list of suppliers who meet certain basic criteria, a secondary procurement process needs to be undertaken by the buyer to determine which supplier offers best value for money. Depending on the initial process undertaken to establish a multi-use list, a secondary procurement process will usually be more comprehensive, involving assessment of suppliers against specific requirements. When establishing and undertaking secondary processes applying to multi-use lists, public authorities should refer to requirements set out in Free Trade Agreements (refer to the *International Obligations Guideline* for further information).

Undertaking a secondary procurement process

Public authorities subject to the panel contract or multi-use list are required to:

- purchase goods and services in accordance with the specified secondary procurement process established, unless granted an exemption by the establishing authority
- ensure relevant procurements are approved through the public authority's normal approval processes

⁵ In accordance with the *Sourcing Policy*

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- apply the relevant requirements of the Government's South Australian Industry Participation Policy (SAIPP), as set out below.

Industry Participation Policy

Public authorities and private parties contracting to the Government of South Australia are required to comply with the SAIPP and the supporting procedural and reporting requirements.

The SAIPP outlines various requirements to be applied when undertaking procurements, including establishing and purchasing from panel contracts and multi-use lists.

In accordance with the SAIPP, a Tailored Industry Participation Plan will apply to panels and multi-use lists as follows:

- During the market approach
 - Businesses will be required to submit a Statement of Intent which will form Stage 1 of the Tailored Industry Participation process. The information provided will be used to benchmark a Tailored Industry Participation Plan submitted at Stage 2.
- In secondary procurements
 - A Tailored Industry Participation Plan is required for any secondary procurement valued above \$550,000 (GST inclusive) and SAIPP weightings will apply.

The SAIPP also requires public authorities to:

- where requested, assist suppliers to complete the IPP or direct them to the Office of the Industry Advocate if required
- conduct the assessment for any offers that seek the submission of an IPP Plan 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.

Further guidance is available in the SAIPP and Procedural Guidelines published by the Office of the Industry Advocate.

Drafting the Panel Contract

In accordance with the *Sourcing Policy*, public authorities will use the government's standard government agreements, as far as practicable, for procuring all goods and services, including through panel arrangements. The suitability for use of these agreements should be based on the applicable complexity, value and level of risk.

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Where there is high complexity or specific contractual complexity (such as multi-agency arrangements) public authorities will consult the Crown Solicitor's Office regarding the drafting of a bespoke contract.

Information to be Included in a Panel Contract

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 contract
- any miscellaneous issues relevant to the use of the panel contract (e.g. regional considerations).

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.

Contract Management

Like all contracts, panel arrangements should be effectively managed to ensure the objectives and intended benefits are actually realised. Effective contract management assists 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 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 any 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 needs to clearly stipulate the reporting and data collection requirements in the acquisition plan.

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

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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 *Unsolicited Proposals Schedule*.

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