

SOURCING POLICY

PURPOSE

This policy outlines the requirements for approaching the market to source goods and services, including construction projects valued up to \$165,000, on behalf of the South Australian Government ('government').

South Australian public authorities ('public authorities') will follow the acquisition strategy that was approved during the planning stage of the procurement process.

PREPARING TO APPROACH THE MARKET

Market Approach Templates

Public authorities will use the Procurement Services SA's standard market approach templates for all goods and services procurements with an estimated value above \$55,000. The table below provides a summary of the standard market approach templates that are suitable for use depending on the applicable complexity classification.

Standard Market Approach Templates	Transactional	Routine	Complex	Strategic
Request for Quotation (RFQ)	Suitable	Suitable	Not Suitable	Not Suitable
Invitation to Supply (ITS) Parts A, B, C and D	Suitable	Suitable	Suitable	Suitable
Expression of Interest (EOI) Parts A, B and C	Suitable	Suitable	Suitable	Suitable

Public authorities will tailor the standard market approach templates in accordance with the instructions in each template to ensure they are fit-for-purpose and will achieve the procurement objective(s).

Public authorities will only seek the minimum information required from suppliers to fairly evaluate offers received. However:

- where the RFQ document is used, public authorities will in every case apply all the response questions set out in Part C Section 1 of the RFQ template
- where the ITS documents are used, public authorities will in every case apply all the response questions set out in Part D Section 1 of the ITS template
- where the EOI documents are used, public authorities will in every case

Further information: Procurement SA

Contact Email: procurement@sa.gov.au

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apply all the response questions set out in Part C Section 1 of the EOI template.

Public authorities will not make any changes to the ITS Part A Process Guidelines or EOI Part A Process Guidelines without first seeking legal advice from the Crown Solicitor's Office (CSO).

Public authorities will take into account relevant requirements in the *SAIPP Procedural Guidelines*.

The public authority will include a proposed contract with the market approach documents, where possible.

STANDARD GOVERNMENT CONTRACTS

Procurement Services SA has developed the following contract templates for use when sourcing goods and services (not for ICT procurements):

- *Standard Purchase Order*
- *Standard Goods & Services Agreement*
- *Not for Profit Funded Services Agreement*
- *Minor Works Agreement*.

The *Standard Purchase Order* can be used for transactional goods and services procurements.

The *Standard Goods and Services Agreement* can be used for most routine and complex procurements of goods or services. The *Standard Goods and Services Agreement* is not suitable for use in the following circumstances:

- Construction projects.
- Strategic procurements for goods and services.
- Multi-agency arrangements (these are contracts that enable multiple agencies to purchase under one contract e.g. across government panel contracts).
- Across government information and communications technology contracts (e.g. eProjects contracts and tiered procurement contracts).
- Software licensing, software as a service, hosting, subscriptions for applications and other digital resources, software development, software

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hosting and support arrangements.

- Principal contractor controlled contracts - where a supplier is contracted to manage several procurements of goods and services on behalf of the public authority.
- Joint venture/partnerships/collaborative research arrangements where the joint venturers/partners share the costs, risks and benefits.
- Public Private Partnerships and other forms of alliance contracting.

Public authorities are required to use the *Standard Not-for-Profit (NFP) Sector Funded Services Agreement* for all transactional, routine and complex procurements where the NFP organisation is providing services in exchange for up-front block funding. Where payment is based on a fee for service and is paid in arrears, the *Standard Goods and Services Agreement* should be used, as far as practicable.

For low-risk construction projects (i.e. minor works) valued up to \$165,000, the *Minor Works Agreement* may be used.

There is no standard government agreement for the procurement of ICT related products and services. For ICT related procurements, public authorities will need to consider:

1. whether it can leverage its purchasing power and the willingness of the supplier to win the government's business, to require the supplier to agree to government's preferred contracting terms; and
2. whether the operational risk to government, the strategic importance and the value of the procurement warrants the public authority seeking legal advice about appropriate contractual terms.

Where the provision of goods or services (including ICT related products and services) is contractually complex, high value or there is significant operational and/or contractual risk (e.g. strategic procurements), it is recommended that public authorities seek legal advice about appropriate contractual terms (which may include the drafting of a bespoke contract).

The terms and conditions in the government's standard contract templates are fair and balanced and should not be amended unless there is a compelling reason. It is recommended that public authorities consult with the CSO or public authority's inhouse legal counsel (if applicable) if a public authority wishes to change or add to the standard terms and conditions of the standard government agreements.

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Disclosure of evaluation criteria to the market

Public authorities will ensure that market approach documents (including expressions of interest but excluding market sounding processes such as a request for information) identify the evaluation criteria that will be used to evaluate supplier responses, including applicable mandatory, weighted and non-weighted criteria.

The evaluation criteria used by the public authority to evaluate supplier responses will be the same as those that were approved as part of the approval to approach the market. If changes to the evaluation criteria are required and approved, the market will be notified as soon as practicable of the change and provided the opportunity (where applicable) to amend their offer.

Advice to potential suppliers on the disclosure of contracts

Public authorities will inform suppliers, in writing, that if they enter into a contract with the public authority, the contract may be subject to the disclosure requirements of *PC027 Disclosure of Government Contracts*. Public authorities will consider if a 'contract disclosure' special conditions clause may be applicable and will include this in the proposed contract that is issued with the market approach documentation, as required.

APPROACHING THE MARKET

All approaches to market will be released for a period that is sufficient for suppliers to prepare and electronically submit a high-quality offer¹. The closing date and time will be clearly specified on the market documentation.

At a minimum, open market approaches with an estimated cost above \$550,000 will be released in electronic form on the [SA Tenders and Contracts](#) website for a minimum period of 25 calendar days (in accordance with the government's international obligations for all covered procurements).

If part of a two-stage market approach, it is recommended that the second stage also has a minimum release period of 25 calendar days.

All procurements will allow for electronic lodgment of a supplier's offer.

Communication with suppliers

Once an approach to market is released, only the public authority's nominated Contact Officer may communicate with potential suppliers about the procurement. This does not include the industry briefing where other public authority officers may be required to communicate information about the procurement.

¹ A minimum release period of 25 calendar days is recommended for all market approaches, including a direct or limited market approach.

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Clarifications and Addenda

If changes are made to market approach documentation or the procurement process during the opening period, public authorities will prepare and release addenda via the SA Tenders and Contracts website, as soon as practicable.

If a supplier asks for clarification or further information regarding the market approach documentation or procurement process, where appropriate, the Contact Officer will promptly make its response available to all potential suppliers at the same time by way of an addenda released on SA Tenders and Contracts.

Extension to opening periods

Public authorities will only extend the opening period where exceptional circumstance(s) impacts a supplier's ability to meet the initial closing time.

If an extension is issued, the extension will apply equally to all suppliers. Approval to extend the opening period will be at the discretion of the public authority's Chief Executive (or authorised person). An extension will not be given if doing so will compromise the integrity of the procurement process.

Advertising an across-government², multi-agency or panel arrangement

During the sourcing stage, public authorities establishing an across-government, multi-agency or panel arrangement (contract) will, if applicable:

- not raise supplier expectations of a higher volume of work than is available and make no commitment to undertake a specified volume of purchases during the contract period
- inform all relevant panel members of the secondary procurement process to be followed
- inform all relevant panel members that the public authority may add panel members if they meet the prequalification criteria or remove panel members if they fail to meet performance requirements or due to insolvency
- inform all relevant panel members that the public authority may add or remove goods or services as circumstances arise (e.g. discontinuance of a product).

EVALUATING OFFERS AND SUPPLIER SELECTION

Receiving and opening supplier offers

The process of receiving, registering, receipting and opening supplier offers will be secure and ensure confidentiality.

² An across-government contract will not be established without approval from the Treasurer, who may take the decision to Cabinet.

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Suppliers will be kept informed of the progress of the evaluation of their offer, particularly if there are delays.

Public authorities will ensure that controls are in place to prevent unauthorised access to, and divulging of, commercial-in-confidence contract information (except where allowed for by government policy or legislation).

Late offers

An offer received after the close of the opening period is a 'late offer' and will not be accepted, unless:

- the public authority determines in its sole discretion that it has caused or contributed to the failure to lodge by the closing date and time, or
- the public authority decides that exceptional circumstances exist that warrant consideration of the late offer.

Approval to accept a late offer will be authorised by the public authority's Chief Executive (or authorised person). A late offer will not be accepted if doing so will compromise the integrity of the procurement process.

Evaluation Conflict of Interest Declaration

All participants in the procurement evaluation process (e.g. public authority employees, project consultants and probity advisers) will complete a conflict of interest declaration and confidentiality agreement prior to commencing the evaluation.

Any actual, potential or perceived conflict of interest identified before, during or at the conclusion of the evaluation process will be documented and actioned appropriately by the Chair of the evaluation panel. A conflict of interest declaration will be completed even where there is no conflict to declare.

Evaluation methodology

The evaluation of a supplier's offer will follow the approved approach to market, including evaluation methodology and criteria.

Departure from approved approach to market

Where a public authority seeks to depart from an approved approach to market prior to contract execution, the public authority will assess whether the departure is material and requires further approval before proceeding.

The public authority will assess the level of departure by considering:

- the measure of impact on the market approach, time and effort of supplier to respond, probity and/or the procurement outcome
- the stage in the procurement process.

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The *measures of impact* for departures are categorised as follows:

Measure	Description of Impact
Insignificant	No potential to impact the market approach and/or the outcome. No risk to perceived or actual probity of the process from the departure. No potential to impact the time and effort of suppliers to respond.
Minor	Limited potential to impact the market approach and/or the outcome. Limited risk to perceived or actual probity of the process from the departure. Limited potential to impact the time and effort of suppliers to respond.
Moderate	Moderate potential to impact the market approach and/or the outcome. Moderate level of risk to perceived or actual probity of the process from the departure. Moderate potential to impact the time and effort of suppliers to respond.
Major	High potential to impact the market approach and/or the outcome. Major risk to perceived or actual probity of the process from the departure. Major potential to impact the time and effort of suppliers to respond.

The *stage in the procurement process* when the departure might occur includes:

Stage	Description of when the departure occurs
Prior to Market Approach	After approval but prior to approaching the market.
During Market Approach	During market approach but prior to opening offers.
During Evaluation	During the evaluation period but prior to the approval of the procurement outcome.
Post Procurement Outcome Approval	After approval of the procurement outcome but prior to contract execution.

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The *level of departure* can be determined using the following matrix:

Stage in the Process				
	Prior to Market Approach	During Market Approach	During Evaluation	Post Procurement Outcome Approval
Major	High	Extreme	Extreme	Extreme
Moderate	Medium	High	Extreme	Extreme
Minor	Low	Medium	High	High
Insignificant	Low	Low	Medium	Medium

For each level of departure, the following action is required by the public authority:

Departure Level	Action
Low	Maintain a record of the departure.
Medium	Maintain a record of the departure and report the departure to the authority that approved the approach to market. Where the approved departure involves a change to the evaluation criteria during the market approach, issue an addendum notifying the market of the change as soon as practicable.
High / Extreme	Approval of the departure is to be obtained from the authority that approved the approach to market, prior to progressing further. Where the approved departure involves a change to the evaluation criteria during the market approach, issue an addendum notifying the market of the change as soon as practicable.

For low and medium level departures, approval requirements are at the discretion of the public authority.

Unsolicited proposals

The public authority will manage unsolicited proposals in accordance with the *Unsolicited Proposals Schedule* (for proposals valued less than \$1.1million) and *DPC Circular 038 Unsolicited Proposals* (for proposals valued at \$1.1million and above).

Emergency situation procurements

A public authority will manage the procurement of goods and services under an emergency in accordance with the provisions of emergency-related legislation and the *Emergency Situations Procurement Schedule*.

The *Emergency Situations Procurement Schedule* only applies to procurements undertaken by those public authorities who have emergency responsibilities and who are responding to an emergency, in accordance with the provisions of the *State Emergency Management Plan*, or formal arrangements outlined in other state or Commonwealth emergency services related legislation.

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CONTRACT NEGOTIATION AND DEVELOPMENT

Negotiations

During negotiations, public authorities will ensure:

- the negotiation process is transparent, documented and conducted in a manner that is fair and equitable for all shortlisted suppliers
- requests seeking further information, improvements to a supplier's offer or a best and final offer are conducted in a consistent manner and that any accepted improvements are within scope of the market approach
- the negotiation is undertaken by a team of persons with the capability required to adequately represent, and advocate on behalf of, the public authority.

A formal negotiation plan will be prepared for all negotiations undertaken for a complex or strategic procurement. Public authorities will assess whether a formal negotiation plan is required for negotiations undertaken for a transactional or routine procurement and will prepare a negotiation plan as required.

Contract execution

All contracts will be approved and executed in line with *Treasurer's Instructions 8 Financial Authorisation* once approval of the procurement outcome has been obtained.³

Notifications of outcome and tender debriefs

All suppliers that submitted an offer will be advised in writing of the outcome of their offer and given the opportunity to receive feedback on their offer.

The public authority will prepare and conduct a formal tender debrief as requested.

Contract Recording and Disclosure

Contract details will be entered in the public authority's contract register and will be disclosed in accordance with *PC027 Disclosure of Government Contracts*, if applicable.

Continuous improvement

Within 60 days of approval of the procurement outcome, public authorities will undertake a documented post sourcing review for all complex and strategic procurements to inform and improve future procurement processes and strengthen procurement capability.

³ See section below on 'Approval of Procurement Outcome' for further details.

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APPROVAL OF PROCUREMENT OUTCOME

Direct market approaches

Where approval has been given for a direct market approach, and there was no high or extreme level departure from the approved market approach (including evaluation methodology and criteria), no further procurement approval is required.

Where a high or extreme level departure has occurred during the market approach, approval of the departure is to be obtained from the authority that approved the approach to market prior to progressing further –as per the ‘departure from approved market approach’ section of this policy.

If the public authority becomes aware, prior to contract execution, that the recommended supplier is not a South Australian business (in relation to the procurement), approval of the procurement outcome will be obtained from the public authority’s Chief Executive if the Chief Executive did not initially approve the direct market approach. This authority cannot be delegated.

Limited and open market approaches

A public authority will obtain approval of the procurement outcome for all limited and open market approaches, prior to awarding a contract.

For routine procurements valued above \$55,000, at a minimum, the approval will document the:

- evaluation process undertaken
- evaluation outcome and recommended supplier(s) (if applicable) and if the recommended supplier(s) are a South Australian business
- the panel rules for a secondary procurement process (if the procurement outcome relates to the establishment of a panel contract)³
- value of the proposed contract
- duration of the proposed contract (including extension options).

For complex or strategic procurements with a limited or open market approach, approval of the procurement outcome will be obtained in the form of a purchase recommendation, prior to awarding a contract. The public authority may tailor the purchase recommendation to ensure it is fit-for-purpose for the complexity of the procurement. However, at a minimum, the purchase recommendation will document:

- the evaluation process undertaken
- the evaluation outcome and recommended supplier/s and if the recommended

³ See section below for approval requirements specifically related to the establishment of a panel arrangement.

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supplier/s is a South Australian business

- any identified conflict/s of interest
- negotiations undertaken (if any)
- any departures from the approved acquisition plan or evaluation plan (including approvals sought to depart)
- the panel rules for a secondary procurement process (if the procurement outcome relates to the establishment of a panel contract)
- final contract details including value, duration, extension options and any budget set aside for contingencies
- lessons learnt for the purpose of continuous improvement.

The purchase recommendation will be signed by all members of the evaluation panel and the negotiation team (if applicable) to:

- demonstrate it is a true reflection of the procurement process
- confirm the conflict of interest declarations.

Approval of the procurement outcome (i.e. purchase recommendation, if applicable) will be obtained from the authorised person identified in the approval to approach the market (i.e. acquisition plan, if applicable), unless the recommended supplier(s) are a non-South Australian business.

Where there is a South Australian business that could supply the required good or service but the recommended supplier is not a South Australian business, approval of the procurement outcome will be obtained from the public authority's Chief Executive. This authority cannot be delegated. In this case, the approval will also detail why a non-South Australian business is being recommended over a South Australian business.

The Chief Executive can authorise a person to approve a procurement outcome awarding the contract to a non-South Australian business where there are reasonable grounds to believe that there is no South Australian business that could supply the required good or service.

Establishment of a panel contract

Where the procurement relates to the establishment of a panel contract, public authorities will follow the same approvals process for a 'limited or open market approach'.⁴ However, approval of the procurement outcome (including panel rules)

⁴ See section above for approval requirements of 'limited and open market approaches'.



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will be obtained from the public authority’s Chief Executive if one or more of the recommended suppliers are a non-South Australian business. This authority cannot be delegated unless there are reasonable grounds to believe that there is no South Australian business that could supply the required goods or services.

Secondary procurement processes

For all secondary procurement processes conducted in accordance with the approved panel rules, approval of the procurement outcome will be obtained in line with those panel rules.

For the avoidance of doubt, approval does not need to be obtained from a public authority Chief Executive to award a contract to a non-South Australian business, where the contract is a secondary contract awarded under an established panel arrangement, through a secondary procurement process conducted in line with the approved panel rules.

Where the panel rules are silent on the approval process for secondary procurement processes (or there are no approved panel rules), the public authority will follow the approval processes detailed in the sections above of this policy.