PROCUREMENT PLANNING POLICY

Contents

NOTES:

- Terms used throughout this policy have the same meaning as defined in the *Public Finance and Audit Act 1987*, *Treasurer's Instructions 18 – Procurement,* and the Procurement Glossary.
- All values identified in the framework are in Australian Dollars and are GST inclusive.

Introduction

This policy outlines requirements for planning a procurement on behalf of the South Australian (SA) Government, starting from identification of need and ending with approval to approach the market.

Scope and application

Policy requirements apply to:

- South Australian public authorities as defined by the *Public Finance and Audit Act 1987*
- procurements as defined by *Treasurer's Instructions 18 – Procurement (TI 18)*.

Construction projects above $165 000 are exempt from the application of this policy under *Treasurer's Instructions 18.14 – Procurement*.

The following schedules to the SA Government Procurement Framework provide additional information related to the planning and management of specialist procurements.

- Emergency Situations Procurement Schedule
- Unsolicited Proposals Schedule
- Disposal of Goods Schedule.

Departures from this policy

All departures from this policy for procurements above $55,000 will be recorded in the public authority's departure register including the particulars of and reasons for those departures.

TI 18.12 Maintaining a departure register

Identifying a procurement need

The requirement to undertake a procurement process often results from a business case[1] in response to a client, community, or business need. Where a need is identified, public authorities will engage with relevant communities, end users, and other key stakeholders (internal and external to government) to ensure it clearly defines the need and identifies the procurement objectives.

Procurement objectives will be properly scoped and closely aligned to the government and public authority's strategic objectives.

The procurement need or objectives will, as far as possible, be described as an outcome rather than a specific good or service.

[1] If the procurement is for a project that meets the definition for 'Public Sector Initiative' as defined by *Treasurer's Instructions 17 – Evaluation of and Approvals to Proceed with Public Sector Initiatives*, that process will also be followed.

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Government goods and services as an alternative to procurement

Before planning a procurement a public authority will consider whether the need can be met using goods or services provided by another public authority.

Where a public authority is satisfied the need can be met and value for money achieved using goods or services provided by another public authority, the procuring public authority:

- will develop and maintain appropriate documentation that governs their use of the goods or services (e.g. through a Memorandum of Administrative Arrangement)
- will seek approval in accordance with the procuring public authority's financial authorisations framework
- does not have to report the activity through the Procurement Activity and Reporting System (PARS) or publish the activity on the Forward Procurement Plan.

Identifying the need for a standing offer or prequalification list

Standing offers

A public authority may establish a standing offer contract where:

- there is verifiable demand for goods or services for the life of the standing offer
- any exemptions from using the standing offer will not infringe legal obligations.

When developing a standing offer that will include multiple suppliers a public authority will determine:

- rules for selecting, adding, and/or removing suppliers
- a secondary procurement process, ensuring flexibility and minimal administrative burden.

Prequalification list

A public authority may establish a prequalification list to identify suppliers that meet certain criteria for participating in the future procurement of specified categories of goods or services. The requirements for management of prequalification lists are consistent with the South Australian government's international trade obligations.

A prequalification list will not be established or used for the purpose, or with the effect, of creating unnecessary obstacles to the participation of suppliers in the public authority's procurements.

When establishing a prequalification list, the public authority will:

- allow suppliers to apply at any time for inclusion on the prequalification list
- implement guidance material covering:
  - application the SA Industry Participation Policy (SAIPP)
  - how to maximise the opportunity for SA business participation
  - how it will manage the arrangement (including the period of validity of the prequalification list).

Across-government contracts

A public authority will confirm, through a consultative process, support from affected public authorities before progressing a procurement for an across-government contract.

Any proposed across-government contract, whether for a new or continuing need, will develop a sourcing strategy and obtain endorsement from the Procurement Review Committee prior to developing an approach to market.

A **mandated** across-government contract, whether for a new or continuing need, will not be established without approval from the Treasurer prior to approaching the market. Confirmation of approval to mandate the contract will be documented in the approval to approach the market.

Analysing the supply market

Industry engagement

Public authorities will seek to engage a diverse range of prospective suppliers when planning a procurement. The level of engagement will be commensurate with the complexity, risk and value of the procurement activity.

Supply market and supply chain analysis

Public authorities will analyse the supply market and any associated supply chains to assess market capability, capacity, and willingness to achieve the procurement objectives.

Market analysis should consider the potential benefits and opportunities of disaggregating supply and include consideration of local businesses that could supply or participate in the supply chain, including Aboriginal enterprises and regional and rural businesses.

A market analysis may not be required if the procurement is from a standing offer or prequalification list where the market is already well known. This decision is at the discretion of the public authority.

Estimating the value of a procurement

A procurement's value is not the same as its whole-of-life cost or its value for money.

The value of a procurement must be estimated before a market approach is planned. The public authority will estimate the value of a procurement by combining:

> ***TI 18.7*** Dividing high value procurements
>
> ***TI 18.7*** Dividing major projects

- the estimated value of the required goods or services based on market analysis
- the estimated value of any contract extensions and other options
- GST.

When the value of a procurement cannot be estimated it must be treated as valued above the closest procurement threshold ($55,000 or $550,000).

Risk, complexity and capability

Procurement risk assessment

A risk assessment will be undertaken for all procurements valued above $55,000. A separate risk management plan will be attached to the procurement plan for all **complex** and **strategic** procurements.

The assessment will identify, analyse, allocate and determine treatments for risks related to the procurement process and to the potential subsequent contract (noting that the contract manager assigned to the subsequent contract will undertake a new risk assessment for the contract at the time of handover from procurement to contract management).

The assessment process will be commensurate with the complexity and value of the procurement and will determine the overall risk of the procurement. Risks considered should include, but not be limited to:

- financial risk: cost overruns, price volatility, international exchange rates
- operational risk: supply chain disruptions, supplier instability, demand fluctuations
- compliance risk: intellectual property, corruption, maladministration
- reputational risk: late, incomplete or failed delivery.

Records and information

Public authorities will identify any electronic or hardcopy records and information that will be created, captured or required by suppliers, potential suppliers or the public authority during procurement and/or contract delivery.

Public authorities will ensure their management of records and information risks (including security, privacy, confidentiality and accessibility) complies with the Records and Information Security Schedule.

Procurement complexity and public authority capability assessment

A complexity assessment will be undertaken to classify the procurement as either **transactional, routine, complex** or **strategic** according to the public authority's internal procurement framework and tailored complexity scale.

A review of the public authority's procurement capability will also be undertaken. These assessments will be used to determine the necessary resource allocation to meet the minimum requirements of the procurement process.

Public authorities may reassess the complexity of the procurement and capability of allocated resources throughout the procurement process and adjust, as required.

Using a standing offer or prequalification list

Standing offer

Before planning a procurement, public authorities will identify whether an existing standing offer could meet the need.

Where an applicable standing offer is **mandated** for use, the public authority will:

- only procure from that standing offer in accordance with the prescribed secondary procurement process
- apply the requirements of the SAIPP.

Where an applicable standing offer is **optional** for use by the public authority, the public authority may choose to procure from the standing offer in accordance with the prescribed secondary procurement process.

Where a standing offer does not prescribe a secondary procurement process, the public authority will undertake procurements from the standing offer in accordance with this Procurement Planning Policy and the Sourcing Policy.

Prequalification list

Where there is an applicable prequalification list, a public authority may conduct a market approach where only prequalified suppliers are invited to participate. The public authority will allow all suppliers who are prequalified to participate in a procurement, unless the Chief Executive (or authorised person) has approved:

- a limitation on the number of prequalified suppliers who will be invited to submit an offer for the procurement
- the criteria that will be used by the public authority in selecting that limited pool of prequalified suppliers who will be invited to submit an offer.

Should a limitation be placed on the number of prequalified suppliers who will be invited to submit an offer for a particular procurement, the limiting criteria:

- will not be discriminatory
- will not be that the supplier has previously been awarded a contract from that public authority or any other SA Government public authority (although prior relevant experience can be considered)
- may include subject matter expertise, availability and experience, but only to the extent that the criteria are effectively conditions for participation in a procurement. They should be limited to only those conditions that are essential to ensure legal and financial capacity, and/or commercial and technical capability.

Developing a specification

A specification will be developed by public officers with adequate technical skills and applicable knowledge. Specifications will avoid the use of proprietary standards and will detail requirements in a manner that maximises the opportunity for a diversity of competitive offers.

Specifications will identify, at a minimum:

- procurement need
- proposed contract term including any extension options
- records and information security
- performance standards including management of risks
- insurance and supplier liability
- maximise the opportunity for SA business participation by applying the SAIPP
- any supplier reporting and contract management requirements.

Insurance and supplier liability specifications

Public authorities will identify the type(s) of insurances and minimum level(s) of coverage to be effected and maintained by each supplier. The type(s) of insurances required will depend on what is being procured. The key types of insurance cover for the supply of goods or services are:

- public liability
- product liability
- professional indemnity.

All suppliers are required to have a minimum of $1 million Public Liability Insurance coverage. The public authority is not required to be named on the supplier's Public Liability Insurance policy.

The default liability limit for all suppliers of **low** to **medium** risk procurements that use the Standard Goods and Services Agreement or Standard Not-for-Profit Sector Funded Services Agreement will be between 1 and 5 times the total value of the contract. This will be determined by the public authority based on the risk of the procurement.

Public authorities are encouraged to seek advice from the Crown Solicitor's Office and the SA Government Finance Authority regarding supplier liability for **complex** or **strategic** procurements or where it is not possible to determine the risk level prior to approaching the market.

Contract terms for certain not-for-profit arrangements

Public authorities will establish longer-term contracts for all procurements with not-for-profit suppliers where the contract is required for longer than 2 years and there are no linked funding arrangements with the Commonwealth Government. The appropriateness of longer-term contracts will be assessed on a case-by-case basis considering ongoing budget availability, need and value for money.

Public authorities will provide not-for-profit suppliers with the following information at least 6 months prior to the contract end date:

- notice that the contract will not be extended beyond expiry; or
- notice that the contract will be extended beyond expiry, with the extension to be in place at least 3 months prior to the end date.

These requirements do not apply to funding of one-off services, pilot programs, or other circumstances where the delivery of services will not be continued or extended beyond the initial contract term.

Approaching the minimum number of suppliers

The following are the **minimum** numbers of suppliers that must be approached. Procurements may approach more than the minimum number of suppliers.

Goods and services valued up to and including $55,000

- **At least one supplier**.

Goods and services valued above $55,000 up to and including $550,000

- **At least three suppliers**, **one of which must be an SA business**. Where an SA business cannot be identified the procurement must be advertised as an open tender for a minimum period of 14 calendar days, unless approved otherwise by the Chief Executive (or authorised person).

Goods and services valued above $550,000

- **The open market**.

Approaching fewer than the minimum number of suppliers

A decision to approach fewer than the minimum required number of suppliers will not be taken for convenience or to avoid competition. A decision to do so will be documented including evidence of thorough market research and sound knowledge of category/market pricing. Where fewer than the minimum required number of suppliers are to be approached, public authorities will maintain the integrity of the procurement process and ensure the market approach will deliver the best procurement outcome, achieve value for money, and comply with the SAIPP and any applicable international obligations.

A **Chief Executive (or authorised person)** may approve one of the following approaches to fewer than the minimum required number of suppliers under the identified circumstances. In all circumstances, the public authority will use their best endeavours **to identify and invite at least one SA business** to submit a quote.

- A **direct** market approach valued above $55,000 to a single supplier.
- A **limited** market approach valued between $55,000 and $550,000 to fewer than three suppliers.
- A **limited** market approach valued above $550,000 to anything other than the open market.

*Circumstances where an **authorised person** may approve the approach*

- a risk to public health and safety necessitates a direct/more limited approach
- a procurement is directly approaching an Aboriginal enterprise up to and including the value of $550,000
- a secondary procurement is being carried out in accordance with the rules of a standing offer
- an open invitation to participate in a procurement (e.g. expression of interest, establishment of a prequalification list) was issued prior to conducting that procurement, and the supplier(s) to be approached either:
  - expressed interest in participating in that procurement
  - qualified, or otherwise met the conditions, for participating in that procurement
- a need can only reasonably met by a particular supplier for any of the following reasons:
  - the requirement is for a work of art
  - an intellectual property monopoly or other exclusive rights exist
  - due to an absence of competition for technical reasons
- a prototype is purchased that is intended for limited trial or is developed for a particular contract for research, experiment, study or original development
- a contract is awarded to the winner of a design contest, provided the contest has been run in a manner that is consistent with free trade obligations
- exceptionally advantageous conditions exist which only arise in the very short term (e.g. from unusual disposals, liquidation, bankruptcy, or receivership, but not for routine purchases from regular suppliers)
- reasons of extreme urgency brought about by unforeseeable events exist and the timeframes to deliver are too short to use an open market approach.

*Circumstances where a **Chief Executive** must approve the approach*

- only a limited number of suppliers have the capability, experience and suitability to meet the public authority's needs and no alternative or substitute exists; or
- there are other justifiable reasons for limiting the number of suppliers.

In all cases, the public authority will use their best endeavours to **identify and invite at least one SA business** to submit a quote.

Preparing market approach documentation

Market approaches below $55,000

Market approaches valued below $55,000 will seek written quote(s).

Market approaches above $55,000

Market approaches valued above $55,000 will use Procurement SA's standard market approach templates according to the complexity of the procurement.

	COMPLEXITY OF PROCUREMENT			
TEMPLATE	**Transactional**	**Routine**	**Complex**	**Strategic**
Request for Quote (RFQ)	Suitable	Suitable	Not suitable	Not suitable
Invitation to Supply (ITS)	Suitable	Suitable	Suitable	Suitable
Expression of Interest (EOI)	Suitable	Suitable	Suitable	Suitable

Standard market approach templates will be tailored by the public authority, in accordance with the instructions in each template, to ensure they are fit for purpose.

Public authorities will only seek the minimum information required from suppliers to fairly evaluate offers received but must use the mandatory sections indicated in each market approach template.

Standard government contract templates

Where possible, public authorities will include a proposed contract with market approach documents.

Contract templates have been developed by the Crown Solicitor's Officer and contain fair and balanced terms and conditions that should not be amended unless there is a compelling reason. It is recommended that public authorities consult with the Crown Solicitor's Office or in-house legal counsel if a public authority wishes to alter the standard terms and conditions or negotiate to use a supplier's own contract templates and/or documentation.

Contracts with for-profit suppliers (excluding ICT)

- The Standard Purchase Order is suitable for **transactional** procurements.
- The Minor Works Agreement is suitable for **low-risk construction projects** valued up to $165,000.
- The Standard Goods and Services Agreement is only suitable for **low to medium risk procurements**, regardless of the complexity of the procurement under the public authority's internal procurement framework. The Standard Goods and Services Agreement is not suitable for:
  - construction projects
  - ICT-related goods and services, including:
    - across-government ICT contracts (e.g. eProjects contracts)
    - software licensing, software as a service, hosting, subscriptions for applications and other digital resources, software development, and software hosting and support arrangements

- multi-agency arrangements (i.e. contracts that enable multiple agencies to purchase under one contract)
- principal contractor-controlled contracts (i.e. where a supplier is contracted to manage several procurements of goods and services on behalf of the public authority)
- joint ventures, partnerships, and collaborative research arrangements, where the joint venturers and/or partners share the costs, risks, and benefits
- Public Private Partnerships and other forms of alliance contracting.

Contracts with not-for-profit suppliers

Up-front block funding

The Standard Not-for-Profit Funded Services Agreement is appropriate for the majority of contracts where up-front block funding is provided to a not-for-profit supplier. Public authorities should use the standard agreement unless extenuating circumstances suggest an alternative approach may be required, in which case legal advice should be sought.

Bespoke agreements must not create additional burdens on, or unreasonable complexity for, not-for-profit suppliers who must be supported to engage with any development of any non-standard agreement.

Fee-for-service funding

Where payment is based on a fee for service and paid in arrears, the Standard Goods and Services Agreement should be used if possible.

Contracts for ICT

There is no standard government agreement for the procurement of ICT-related goods and services. For ICT-related procurements, public authorities will consider whether:

- it can leverage its purchasing power to require the supplier to agree to government's preferred contracting terms, and
- it is appropriate to accept a supplier's terms, taking into consideration operational risk, strategic importance and the value of the procurement.

Planning for evaluation of offers

Public authorities will develop an evaluation methodology to assess the value for money of suppliers' offers. The evaluation methodology will include, at a minimum:

- identification of the person or team that will evaluate offers, ensuring that appropriate skills and capability are represented (e.g. public authority employees, project consultants, probity advisers) and that roles and responsibilities are clearly defined
- evaluation criteria (e.g. mandatory, weighted, non-weighted) that are fit for purpose to achieve the procurement outcomes, incorporate requirements of the SAIPP and consider whole-of-life costs

- the method that will be used to assess the value for money of offers (e.g. lowest cost compliant offer, price as a weighted criterion, balanced judgement framework)

Routine and **transactional** procurements may outline an evaluation plan within the approval to approach the market. For all **complex** and **strategic** procurements an evaluation plan will be prepared and included in or attached to the procurement plan.

Planning for contract management

Public authorities will consider the following when planning for the management of a contract arising from the procurement.

- The roles and responsibilities that will be required to manage a contract arising from the procurement
- The individual public officers who will hold the identified roles and responsibilities
- The awareness and involvement of these individuals in the procurement and procurement planning.

Obtaining approval to approach the market

The following sections of ***Treasurer's Instructions 18 – Procurement*** apply to approaches to market.

A public authority will obtain approval from the Chief Executive (or authorised person) prior to approaching the market.

A **direct market approach to a non-SA business**, with an estimated value above $55,000, must be approved by the Chief Executive unless the approach is a secondary procurement under the approved rules of a standing offer.

Subject to the approval requirements detailed in the Sourcing Policy the approver of an approach to market may, at the time of approving the market approach, authorise another person to approve the subsequent procurement outcome. This will be clearly documented.

TI 18.10, 18.11 Reporting procurements prior to market release

TI 18.11 Directly approaching a non-South Australian supplier

TI 18.11 Releasing procurements above $55,000

TI 18.11 Releasing major project procurements ($500)

Approval for **routine** procurements can be obtained through internal public authority documentation such as an internal briefing or minute. Approval for **complex** or **strategic** procurements will be obtained through an procurement plan which can be tailored to suit the complexity, risk and value of the procurement.

Regardless of the documentation used to seek approval to approach the market, the following information must be included.

PROCUREMENT PLANNING POLICY

	ROUTINE PROCUREMENTS	COMPLEX OR STRATEGIC PROCUREMENTS
Departures from *Procurement Planning Policy* or *Sourcing Policy*	✓	✓
Procurement need	✓	✓
Procurement objectives	✓	✓
Procurement specifications	✓	✓
Estimated value of procurement	✓	✓
Contract term	✓	✓
Records and information security	✓	✓
Local industry capability	✓	✓
Stakeholder engagement		✓
Supply market and supply chain analysis		✓
Contract management approach	✓	✓
Market approach strategy	Evaluation methodology and criteria to be documented	Separate evaluation plan to be attached
Risk management	Management strategy to be documented	Separate risk management plan to be attached