

SOURCING POLICY

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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.

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Introduction

This policy outlines the requirements for approaching the market to source goods and services on behalf of the South Australian (SA) Government.

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

Following the approved approach to market

Public authorities will follow the planned approach to market that was approved during the procurement planning stage.

Departures from an approved market approach may occur under extenuating circumstances. Public authorities must take the following action depending on the timing, impact and level of the departure.

DEPARTURE	APPROVAL	ACTION
Extreme	Required prior to progressing	Obtain approval from Chief Executive
High level		Obtain approval from the authority that approved the approach to market
Medium level	If required by public authority	Maintain a record, report to authority that approved the approach to market
Low level		Maintain a record

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The **level** of departure is determined by combining the impact and the timing of the departure:

		TIMING			
		Before market approach	During market approach	During evaluation	After outcome approval
IMPACT	Major	High level	Extreme	Extreme	Extreme
	Moderate	Medium level	High level	Extreme	Extreme
	Minor	Low level	Medium level	High level	High level
	Insignificant	Low level	Low level	Medium level	Medium level

The **impact** of departure is determined according to the following descriptions:

IMPACT	DESCRIPTION
Major	High potential to impact market approach and/or outcome, or time and effort of suppliers to respond. High risk to perceived/actual probity.
Moderate	Moderate potential to impact market approach and/or outcome, or time and effort of suppliers to respond. Moderate risk to perceived/actual probity.
Minor	Limited potential to impact market approach and/or outcome, or time and effort of suppliers to respond. Limited risk to perceived/actual probity.
Insignificant	No potential to impact market approach and/or outcome, or time and effort of suppliers to respond. No risk to perceived or actual probity.

The **timing** of when departures might occur are:

TIMING	PROCUREMENT STAGE
Before market approach	After approval but prior to approaching the market.
During market approach	During market approach but prior to receiving or opening offers.
During evaluation	During the evaluation period but prior to approval of the outcome.
After outcome approval	After approval of the outcome but prior to contract execution.

Approaching the market

All approaches to market will be released for a period sufficient for suppliers to prepare and submit a high-quality offer. The closing time and date will be clearly specified in the market documentation.

All approaches to market will allow for electronic lodgement of a supplier's offer.

Engagement with the market should be respectful of suppliers by not imposing timeframes that are incompatible with reasonable business operations. This includes not commencing or closing procurement processes on weekends, public holidays, or during periods such as Christmas/New Years.

Disclosure of evaluation criteria

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. Weightings associated with criteria do not need to be disclosed.

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.

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Advice 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 will be subject to the disclosure requirements of Premier and Cabinet Circular 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 if required.

Nominated contact officer(s)

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

Open market approaches valued above \$550,000

At a minimum, open market approaches with an estimated value above \$550,000 will be released in electronic form on the [SA Tenders and Contracts](#) website for a minimum period of 25 calendar days. If a two-stage market approach is used (e.g. expression of interest followed by a request for quote or invitation to supply), it is recommended that the second stage also has a minimum release period of 25 calendar days.

Market approaches to establish standing offers and prequalification lists

Market approach to establish a standing offer

When approaching the market to establish a standing offer, public authorities will:

- 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 suppliers of the secondary procurement process to be followed under the standing offer
- inform all suppliers that the public authority may add further suppliers as contracted suppliers if they meet the required criteria, and remove contracted suppliers if they fail to meet performance requirements or become insolvent
- inform all suppliers that the public authority may add or remove goods or services as circumstances arise (e.g. if a contracted product is discontinued).

Market approach to include suppliers on a prequalification list

An approach to market to include suppliers on a prequalification list will:

- be made available continuously on SA Tenders and Contracts for the duration of the period of validity of the prequalification list
- include the following information:
 - a description of the categories of goods or services for which the prequalification list may be used

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- the conditions for joining the prequalification list that must be satisfied by suppliers and the methods that the public authority will use to assess whether a supplier satisfies those conditions
- the period of validity of the prequalification list and the means for its renewal or termination
- an indication of whether the prequalification list may be used for a procurement that is a 'covered procurement' (defined classes of procurement undertaken by identified public authorities, as set out in international trade agreements).

Simultaneous approach for inclusion on a prequalification list and participation in a procurement

An approach to market to include suppliers on a prequalification list may also constitute an invitation to participate in a specific procurement, provided that:

- the notice meets all the criteria set out above regarding a market approach to include suppliers on a prequalification list
- the notice states that the market approach constitutes an invitation to participate in a specific procurement of goods or services, or that only suppliers on the prequalification list will receive further notices for procurements covered by the prequalification list
- the notice includes as much of the information as is available that a standard market approach would include
- following issue of the notice, the public authority then promptly provides to suppliers, which have expressed interest, sufficient information to enable them to assess their interest in the procurement including all remaining information that is required to be included in a standard market approach.

Managing the market approach period

Confidentiality of offers

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

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).

Clarifications and addenda during the market approach period

If changes are made to market approach documentation or the procurement process, the public authority will prepare and release addenda as soon as possible.

If a supplier asks for clarification or further information regarding the market approach documentation or the procurement process the public authority will, where appropriate, prepare and release addenda as soon as possible.

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If an addenda is issued it will be made available to all suppliers via the same mechanism used to release the approach to market.

Extension to opening periods

Public authorities will only extend the opening period where exceptional circumstances impact a supplier's ability to meet the initial closing time. Approval to extend the opening period will be at the discretion of the public authority's Chief Executive (or authorised person).

If an extension is issued it will apply equally to all suppliers. An extension will not be issued if doing so will compromise the integrity of the procurement process.

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 time and date, 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.

If a late offer is not accepted, public authorities will advise the relevant supplier of the fact.

Evaluating offers

The evaluation of a supplier's offer will follow the evaluation methodology and criteria described in the approval to approach the market. Suppliers will be kept informed of the progress of the evaluation of their offer, particularly if there are delays.

Conflicts of interest

All participants in the evaluation of the procurement (e.g. public authority employees, project consultants, and/or probity advisers) will complete a Conflict of Interest Declaration and Confidentiality Agreement prior to commencing the evaluation. A conflict of interest declaration will be completed even where there is no conflict to declare.

Any actual, potential, or perceived conflict of interest identified before, during, or at the conclusion of the evaluation process will be documented, managed, and monitored appropriately by the Chair of the evaluation panel.

Clarifications during evaluation

Evaluation teams may seek clarifying information from suppliers during the evaluation period providing the request directly and explicitly seeks clarity of information already contained in the supplier's offer. Suppliers must not be afforded any opportunity to add new information to an offer as part of a clarification request.

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Negotiating with shortlisted suppliers

Evaluation teams may negotiate with multiple suppliers after an evaluation process has resulted in a shortlist, or with a single supplier if only one supplier was identified as capable of meeting the procurement need. 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 any accepted improvements are within the scope of the market approach
- negotiation is undertaken by a team with the capability required to adequately represent, and advocate on behalf of, the public authority.

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

Approval and notification of procurement outcome

Approval of direct market approach outcome

Separate approval of the outcome of a direct market approach is not required:

- providing any high or extreme level departure from the approved market approach has been approved by the appropriate authority
- unless the recommended supplier is a non-SA business and the direct approach was not approved by the Chief Executive – in this case the outcome must be approved by the Chief Executive and this authority cannot be delegated.

Approval of limited or open market approach outcome

Documentation of limited or open market approach outcome

A public authority will obtain approval of the procurement outcome for all limited and open market approaches, including those arising from the use of a prequalification list, prior to awarding a contract.

Approval for the outcome of **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 a procurement recommendation, which can be tailored to suit the complexity, risk and value of the procurement. The procurement recommendation will be endorsed by all members of the evaluation team and the negotiation team (if applicable).

Regardless of the documentation used to seek approval for a limited or open market approach outcome, the following information must be included.

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	ROUTINE PROCUREMENTS ABOVE \$55,000	COMPLEX/STRATEGIC PROCUREMENTS
Evaluation process and outcome	✓	✓
Status of any recommended supplier(s) as SA business(es)	✓	✓
Rules for standing offer secondary procurements	✓	✓
Value of one-off contract or maximum value of standing offer	✓	✓
Contract term including extension options	✓	✓
Records and information security	✓	✓
Process to track expenditure and obtain approvals for additional expenditure	✓	✓
Identified conflict(s) of interest	✓	✓
Negotiations undertaken		✓
Acquisition or evaluation plan departures (including approvals)		✓
Budget set aside for contingencies		✓
Lessons learned for the purpose of continuous improvement		✓

Approval of limited or open market approach outcome

Recommended supplier is an SA business

If the recommended supplier is an SA business, approval of the outcome will be obtained from the authorised person identified in the approval to approach the market.

Recommended supplier is not an SA business

If the recommended supplier is not an SA business, approval of the outcome will be obtained as follows:

APPROACH TYPE	SA OFFER(S) RECEIVED	AUTHORITY TO APPROVE SELECTION OF A NON-SA SUPPLIER ● INFORMATION TO BE INCLUDED
Open	Yes	Chief Executive only ● Justification for not selecting an SA business
	No	Authorised person identified in approval to approach the market ● Explanation of how SA participation was encouraged
Limited <i>SA business(es) included</i>	Yes	Chief Executive only ● Justification for not selecting an SA business
	No	Authorised person identified in approval to approach the market ● Explanation of how SA participation was encouraged
Limited <i>SA business(es) not included - with prior authorisation in market approach approval</i>		Authorised person identified in approval to approach the market ● Justification for not including an SA business

Approval of secondary procurement outcome under a standing offer

For all secondary procurements conducted in accordance with the approved rules for purchasing from the standing offer, approval of the procurement outcome will be obtained in line with those rules.

For the avoidance of doubt, approval does not have to be obtained from a public authority Chief

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Executive to award a contract to a non-SA business, where the contract is awarded through a secondary procurement conducted in line with the approved standing offer rules.

Where the standing offer rules are silent on the rules for secondary procurements the public authority will follow the standard approval processes detailed in this policy.

Approval of an outcome establishing a standing offer

Where the procurement results in the establishment of a new standing offer, public authorities will follow the standard approvals process set out in this policy based on the market approach used (direct, limited or open).

Where the procurement results in standing offers with more than one supplier (i.e. a panel of suppliers), approval (including rules for purchasing from the panel of suppliers) will be obtained from the public authority's Chief Executive if one or more of the panel members are a non-SA business.

Approval of an outcome where no contract is awarded

Where the procurement outcome is either:

- cancellation of the procurement
- a decision not to award a contract

the outcome must be approved by the authorised person identified in the approval to approach the market.

Supplier notification and debriefs

All suppliers that submit an offer will be advised in writing of the outcome of their offer and given the opportunity to receive feedback. The public authority will prepare and conduct a supplier debrief as requested.

Approvals and authority for contract execution

Contracts will be executed by a person with the authority to do so. Contracts involving expenditure or potential expenditure (i.e. standing offers) must not be executed unless:

- approval of the procurement outcome has been obtained in accordance with the Sourcing Policy and with any instructions in the approval to approach the market
- authority to incur expenditure under the contract (known as contract consideration and defined as the potential total value of goods or services that may be acquired) has been obtained in accordance with *Treasurer's Instructions 8 – Financial Authorisations*.

Authority to incur expenditure in excess of contract consideration

If expenditure in excess of the authorised contract consideration is required, at any time during the contract term, the additional expenditure must be approved separately as set out in the Contract Management Policy.

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Requirements after contract execution

Contract reporting

Contract details will be reported in accordance with the Contract Reporting Schedule.

Post-sourcing review

Within 60 days of contract execution, 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.