



**Government  
of South Australia**

State Procurement  
Board

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## **Panel Contracts Guideline**

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## Overview

This guideline provides information and practical advice for public authorities when developing acquisition plans for the establishment of panel contracts. In reading this guideline, procurement practitioners will gain an understanding of:

- what a panel contract is;
- the benefits of establishing a panel contract;
- when a panel contract is appropriate;
- the key elements of an acquisition plan for establishing a panel contract; and
- appropriate secondary procurement processes related to a panel contract.

## Object of the Act

The object of the *State Procurement Act 2004* (the Act) is to advance government priorities and objectives through a system of procurement for public authorities directed towards:

- a) obtaining value for money in the expenditure of public money;
- b) providing for ethical and fair treatment of participants; and
- c) ensuring probity, accountability and transparency in procurement operations.

The establishment of panel contracts and the selection of panel members through a secondary procurement process must have regard to, and be consistent with, these principles.

## What is a Panel Contract?

A panel contract (also referred to as a panel arrangement or standing offer) is a contractual arrangement established with at least two suppliers for the anticipated provision of goods or services, as and when required over a specified period of time. The panel contract contains standard terms and conditions under which the goods or services will be provided by panel members.

## When is a Panel Contract Appropriate?

The decision to establish a panel contract should be considered when developing an acquisition plan. Panel contracts are one of various possible procurement strategies that public authorities can choose from. In many cases, public authorities will prefer to adopt a sole supplier contract. 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 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;
- the procurement requirement cannot be adequately predicted;
- 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; or
- there is an advantage in having a choice of suppliers (eg to avoid potential conflicts of interest).



Other factors to consider in establishing a panel contract include:

- geographical coverage;
- access arrangements;
- supplier distribution networks;
- range of goods or services that supplier are able to provide; and
- differences between supplier commercial terms.

## What are the Benefits of Panel Contracts?

Panel contracts can be established to obtain value for money in the expenditure of public monies, a key objective of the Act. Panel contracts can achieve substantial savings and benefits to government by reducing purchasing, administration and transactions costs. Public authorities can benefit by not having to undertake a new procurement process each time they require a particular good or service.

Other potential benefits of establishing a panel contract include:

- achieving improved quality, service and prices through the combined purchasing leverage of public authorities;
- achieving cost savings by avoiding duplication in researching and approaching the supply market through preparing tender documents, calling and evaluating tenders and sourcing services;
- offering greater choice through access to multiple suppliers;
- having fast and streamlined access to suppliers through utilising established secondary procurement processes;
- standardising and increasing consistency in procurement processes and documentation;
- reducing the costs for suppliers by having to respond to fewer tenders;
- predetermined contract terms, conditions and performance measures applying over a series of different requests;
- maintaining competitive tension over the period of the contract;
- minimising contract set up costs through the use of a standard common contract arrangement; and
- providing an opportunity for better strategic relationships with suppliers.

Public authorities should note that whilst this guideline outlines the issues related to establishing panel contracts, the intention is not to promote panel contracts over other more effective or relevant procurement strategies. Panel contracts are not appropriate for all situations and should only be considered where the benefits are clearly articulated and understood.

Disadvantages associated with panel contracts should always be identified, documented and considered in the acquisition planning process. Disadvantages may include increased contract management reporting, billing and payment costs, and additional administrative, communication and red tape requirements on suppliers and/or public authorities.

## Establishing a Panel Contract

A panel contract can be established through:

- an open tender process;
- a selective tender process with suppliers following an expression of interest; or
- a selective tender process with suppliers sourced from a pre-qualified list or other form of common accreditation.



Panel contracts can be established by:

- a public authority, for its exclusive use;
- a public authority, as a lead agency contract on behalf of a consortium of public authorities; or
- a public authority, as an across government strategic panel contract.

#### Value of Contract

The total anticipated value of a panel contract must be determined before approval to commence the procurement process is obtained. The anticipated total value of the panel contract can be calculated by analysing previous expenditure or by forecasting expenditure for a similar period of time.

The documentation must make no commitment to undertake a specific volume of business activity during the panel contract period. However, there is an expectation that all parties will act in good faith and that public authorities do not raise supplier expectations of a higher volume of work than is actually available.

When establishing lead agency panel contracts, principal officers must ensure that there is verifiable demand for the anticipated goods or services for the life of the panel contract. Where appropriate, a commitment should be obtained in writing from those public authorities prepared to procure from a lead agency panel contract.

#### Number of Panel Members

Panel contracts are established with a finite number of suppliers for a predetermined period of time, however there is no 'correct' number of panel members. In some cases 2 or 3 will be appropriate and in others 4, 5 or more. The number of panel members depends on many factors, including the nature of the goods and services required, the supply market maturity and capacity and the anticipated volume of work. 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 evaluation phase.

#### Open or Closed Panels

Panel contracts are generally established as 'closed' panels. Additional suppliers are not normally added to the panel contract until the expiration of the contract period. In some circumstances however, panel contracts may stipulate the right to add suppliers to the panel when deemed appropriate (eg changing circumstances, demographics or increased service requirements). All panel contracts should provide a right to remove panel members as circumstances arise (eg insolvency, failure to meet performance requirements).

If panel contracts are to be established as 'open' contracts, this should be determined clearly in the acquisition planning phase and the reasons for doing so documented. Public authorities must also document how potential 'new' suppliers are to be added to the panel contract and the circumstances and evaluation criteria for doing so.

Failure to do so could mean that new suppliers are not subjected to the same rigorous evaluation process adopted for the original suppliers and lead to allegations of unfair behaviour. For these reasons, open panel contracts should be avoided wherever possible unless there is a clear and justifiable reason for doing so.



In all panel contracts, it is important to clearly determine the rules at the outset and ensure that suppliers selected for the panel understand and agree to the terms and conditions stipulated. Some information may also be provided to potential bidders to assist them to better understand how many suppliers might be on the panel and how the successful suppliers might be selected by public authorities from the panel contract.

#### Pre-qualified lists

A panel contract differs from a pre-qualified list (also referred to as a multi-use list). Suppliers placed on a pre-qualified list have met the preliminary standard criteria and will be required to meet other evaluation and performance criteria during any formal procurement process subsequently undertaken.

The key differences are that a 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;
- is updated on either a continuous or annual basis, adding new suppliers who meet the pre-qualification criteria; and
- is used as a basis for undertaking further open or selective procurement processes (including establishing a panel contract).

#### Free Trade Agreements

The requirements of appropriate free trade agreements must be taken into account where the anticipated value of the panel contract exceeds relevant thresholds. Once suppliers have been selected for inclusion on the panel arrangement, these suppliers can be utilised in accordance with the secondary procurement processes established by the panel contract.

### **Acquisition Planning for Establishing Panel Contracts**

It is expected that acquisition planning to undertake a procurement leading to a panel contract will be undertaken at a level commensurate with the nature and value of the procurement.

Appendix 1 provides a checklist to highlight aspects of the acquisition planning process that may be of particular relevance when planning a panel contract. This should be read in conjunction with the Board's *Acquisition Planning Guideline*.

### **What Information is Required in a Panel Contract?**

The scope and nature of panel contracts will vary in terms of their product or service offerings and in the level of detail. For example, a panel contract for personal computer equipment may contain more detailed and easily specifiable product descriptions than a panel contract for software development. Some panel contracts may include a set price or schedule of rates. Others may include a catalogue outlining the various products covered by the contract. The circumstances of each procurement will determine the panel contract outcome.

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. It may be difficult to specify every possible contingency when establishing the panel contract.

However, all panel contracts will include:

- the nature, description and details of the goods or service that may be purchased under the panel contract;
- the period for which the panel contract is in force;
- a list of public authorities covered or exempted by the panel contract;
- whether the contract is mandatory or optional;
- price review mechanisms as appropriate;
- insurance and security requirements;
- standard government terms and conditions including limitation of liability;
- processes for addressing supplier complaints and resolving disputes;
- the type of secondary procurement processes to be utilised for buying from the panel contract; and
- any miscellaneous issues relevant to the utilisation of the panel contract (eg regional considerations).

## **Who Can Be Covered By a Panel Contract?**

A panel contract must clearly specify the parties to the contract. This may be for example, the whole of government (including statutory authorities), all public authorities subject to the Act or specific public authorities only. Coverage could also include non-government organisations subject to approval by the authorising authority. Each panel contract must make its intentions clear and unambiguous.

Panel contracts must also stipulate whether these parties are required to utilise the panel on a mandatory or optional basis. The decision to obligate the mandatory utilisation of a panel contract must be made by the appropriate authority. This may be Cabinet, the Board or the principal officer of the public authority.

All parties to a mandatory panel contract are required to purchase from this panel contract unless specifically granted an exemption by the approving authority. 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 must not infringe the contractual and legal obligations of the panel contract.

## **How Do You Select a Supplier From a Panel?**

A secondary procurement process is one undertaken by a public authority to select a supplier from a panel, for a particular procurement need. The secondary procurement process undertaken should be as simple and efficient as possible and the effort undertaken should reflect the benefits gained.

When undertaking the process of acquisition planning leading to the establishment of a panel contract, procurement practitioners are required to specify the appropriate secondary procurement processes applicable for selecting suppliers from the panel. The type of secondary procurement process established must be commensurate with the nature, value and risk of the proposed procurement and transactions. Procurements with a higher risk and value profile will require a more rigorous secondary procurement process.



The selection of suppliers through secondary procurement processes can be determined in a variety of ways. The following (not in any particular order) examples can be considered according to how it supports the particular procurement strategy being considered:

- a non competitive basis (eg obtaining a quote from any one panel member);
- a competitive basis (eg obtaining a quote from several or all panel members);
- an equal division of work basis;
- a monetary basis (eg obtaining three quotes for higher level values);
- a rotational basis;
- a geographic basis; or
- a preferred supplier basis (eg one supplier is given the opportunity to undertake the procurement first, then other suppliers approached only if required).

Individual procurements undertaken from panel contracts will tend to be numerous in number and low in their individual dollar value. For example, whilst a panel contract may have an overall anticipated value of \$500,000, this may comprise 50 individual procurements, with an average spend of \$10,000, of which the majority falls into the low value/low risk quadrant.

If appropriate, the secondary procurement process can also specify an upper limit for any individual procurement undertaken from the panel contract. For example, the limit for an individual procurement undertaken from a panel contract may be specified at \$100,000. In this example, procurements greater than this amount would have to be undertaken as a standard (non-panel contract) procurement process.

Procurements undertaken through a secondary procurement process (as outlined in the panel contract) must be approved through the public authority's normal approval processes. Where the value of the procurement exceeds the public authority's procurement authority, the chief executive can approve the procurement without reference to the Board (unless not allowed for in the panel contract).

A contract developer who wants a secondary procurement that exceeds a public authority's procurement authority to be referred to the Board for approval should make this explicit in the acquisition plan.

The nature of the procurement for each risk and value quadrant will determine the type of secondary procurement process for public authorities to adopt. Further guidance for specifying an appropriate secondary procurement process for procurements from each risk/value quadrant is outlined below. This information can by necessity only be a guide and each public authority establishing a panel contract must determine the secondary procurement process applicable for each risk/value quadrant. Note that all panel members must be informed of the secondary procurement processes for how public authorities will select suppliers from the panel contract.

#### Low Value/Low Risk(Quadrant 1)

Due to the low risk and low value nature of procurements falling into this quadrant, obtaining best value in the expenditure of public monies is most effectively achieved by minimising the effort and resources a public authority devotes in conducting a procurement process.

Goods and services in this quadrant often have clear, simple and well understood specifications. The aim is to have an efficient procurement process that produces an acceptable outcome with minimal effort.





### Low Value/High Risk (Quadrant 2)

Due to the low value but high risk nature of procurements falling in this quadrant, obtaining best value in the expenditure of public monies is most effectively achieved by ensuring the supply of the product and minimising potential risks.

Goods and services in this quadrant are often more complex and may have more detailed specifications. Prices may not be clearly stated in the panel contract and competition between several suppliers may provide more benefits to the public authority.

### High Value/Low Risk (Quadrant 3)

Due to the high value but low risk nature of procurements falling into this quadrant, obtaining best value for money from panel suppliers is most effectively achieved by gaining cost efficiencies through a competitive process.

Goods and services in this quadrant are often well understood and competition between suppliers may lower costs to benefit the public authority.

### High Value/High Risk (Quadrant 4)

Due to the high value and risk nature of procurements falling in this quadrant, it is important to adopt an appropriate process with panel providers to select the successful supplier. Goods and services in this quadrant are often complex and have more detailed specifications.

## **Contract Management Processes**

Like all procurement contracts, panel arrangements should be effectively managed to ensure the objectives and intended benefits are actually realised during the period of the panel contract. Effective contract management will assist in:

- planning and developing future purchasing strategies;
- ensuring continuous improvement;
- ensuring accountability and outcomes are achieved; and
- ensuring panel supplier performance.

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

The contract developer should also consider any reporting and data collection requirements (to be undertaken by the supplier or the contract user) to assist in monitoring the contracts effectiveness and usage patterns. Where this is required, the contract developer must clearly stipulate the reporting and data collection requirements in the acquisition plan, for consideration by the approving authority.

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. There may also be a tendency for public authorities to continuously select a 'preferred' supplier from the panel contract, therefore making it difficult for other suppliers to obtain work.

Refer to the Board's *Contract Management Guideline* for more information on this topic.



## Ethical Practices

A person having access to a panel contract is not permitted to allow any unauthorised person to have access to, or divulge to any unauthorised person, the commercial-in-confidence contract information.

The practice of using the information (eg 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 in line with the Board's *Unsolicited Proposals Policy*.

## Publication of Panel Contracts

Details of established strategic across government contracts are available from the Board's web site. Public authorities establishing across government panel contracts are required to advise the Board in order to have the details included on the Board's web site.

## Reporting to the Board

In accordance with the State Procurement Board's responsibilities, the Board may require public authorities to report on purchases from across government or lead agency panel contracts including details of selection processes, supplier performance and spend patterns.

Further information is provided in the Board's *Board Procurement Reporting Policy and Guideline*.

## Further Information and Resources

For feedback or assistance regarding this guideline, please contact:

*Procurement Policy and Governance  
Government Accounting, Reporting and Procurement  
Department for Treasury and Finance  
ph: (08) 8226 5001 fax: (08) 8226 5667  
email: [spb@saugov.sa.gov.au](mailto:spb@saugov.sa.gov.au)  
[www.spb.sa.gov.au](http://www.spb.sa.gov.au)*

## Related Policies and Guidelines

SPB Acquisition Planning Guideline  
SPB Risk Management Policy and Guideline  
SPB Contract Management Guideline  
SPB Board Procurement Reporting Policy and Guideline



## Appendix 1

### ACQUISITION PLANNING FOR PANEL CONTRACTS CHECKLIST

In addition to the Board's *Acquisition Planning Guideline*, this checklist highlights aspects of the acquisition planning process that are particularly relevant to planning a panel contract.

- Key objectives and justification for establishing a panel contract;
- Anticipated expenditure and the term of the panel contract;
- Documented support for establishing a lead agency or across-government panel contract;
- The public authorities or government entities that are party to the panel contract;
- The nature of the goods and/or services the panel contract will provide for;
- Whether the panel contract is mandatory or optional;
- Processes for addressing supplier complaints and resolving disputes;
- The likely or possible panel contract model including term, size, and structure;
- The secondary procurement processes to be utilised for selecting suppliers from the panel; and
- Any miscellaneous issues (eg geographical) related to establishing the panel contract.