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Introduction

The Procurement Practice Guide provides an effective ‘how to’ framework for public sector contracting for products and/or services. Understanding and adhering to these guidelines will help you achieve efficient and effective purchasing outcomes for government.

Purchasing processes should be cost effective for both public authorities and suppliers. A well-planned purchasing process will ensure that policies are followed, pitfalls are avoided and a successful outcome is achieved. It is important to be aware of responsibilities and to plan the entire purchase process before starting. Errors, uncertainty and unrealistic timelines can undermine market confidence, discredit a purchasing process and devalue the outcome of the procurement.

These guidelines cover the primary issues relating to government purchasing and should be read in conjunction with your agency’s own procurement policies and guidelines. Further advice and assistance is available to public authorities from the State Supply Commission (SSC) and the Department of Finance (Finance), if circumstances arise that are not addressed in this Guide.

Application of the Guide

This Guide and the SSC policies reflect the principles and arrangements fundamental to efficient and effective purchasing and contracting.

For consistency the term ‘public authority’ has been used throughout. However, this Guide is provided for general use across the public sector and applies to all methods of procurement, including e-commerce methods.

In undertaking any procurement activity, public authorities must understand and comply with the policy requirements outlined in the SSC policies.

In the event of any inconsistency between this Guide and the supply policies, compliance with the policies takes precedence. All supply policies can be viewed at the SSC’s website at www.ssc.wa.gov.au.
Public Authorities’ Delegations for Purchasing

The SSC delegates its purchasing and contracting authority to public authorities under the jurisdiction of the *State Supply Commission Act (1991)* (the Act).

Under the Act, the authority to purchase resides with the Accountable Authority. This is the officer responsible for the purchasing undertaken by a public authority, and is usually the public authority’s Director General, Chief Executive Officer or their delegate.

Public authorities under the jurisdiction of the Act are issued with an unlimited partial exemption, and a special condition of the partial exemption is that Finance must be involved in all purchases or contract variations valued at $250,000 and above. The Finance procurement team works with the public authorities to facilitate the desired outcomes for strategic purchases, using a best practice framework.

The key concept to appreciate is that, although the procurement process is facilitated by Finance, responsibility for the purchase remains with the Accountable Authority.

The State Supply Commission is responsible for setting supply policy for the procurement of goods and services. Public Authorities are required to comply with these policies when they procure goods and services.

All supply policies may be viewed at [www.ssc.wa.gov.au](http://www.ssc.wa.gov.au).

There are three public authorities that can procure products and/or services to any value without involvement by Finance or the State Tender Review Committee. However, they must comply with SSC and government procurement policies. These agencies are:

- Public Transport Authority;
- Main Roads Western Australia; and
- Insurance Commission of Western Australia.

Finance has been issued with a delegation that allows it to develop and manage whole of government Common Use Arrangements (CUAs) and to purchase products and/or services on behalf of public authorities. For more information please refer to the Appendix - Common Use Arrangements.

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1 Upon application by the public authority, the State Supply Commission may accredit the partially exempt public authority to procure independently to a higher value. If so accredited, the public authority would be issued with a partial exemption that reflects this higher value.
Structure of the Guide

The first part of the guide has been structured in line with the financial thresholds set out in the State Supply Commission’s Open & Effective Competition policy. Even though all procurement has some common elements, the best practice requirements for each purchase will vary depending on the size and complexity of each purchase.

Specific procedures cover the procurement processes for:

- Purchases up to $50,000:
  - Direct sourcing;
  - Verbal Quotations; or
  - Written Quotations;
- Purchases $50,000 up to $250,000:
  - Written Quotations; and
- Purchases $250,000 and above:
  - Open Tender.

Although the generic steps making up the procurement process have been presented in this guide, it should be acknowledged that each procurement requirement may have differences or specialised needs. Recognition of such differences will result in public authorities adapting and applying the process in a manner that will best achieve their individual requirements.

Appendices

The appendices are arranged in separate topics and provide more detailed information relating to particular elements of the procurement process. These appendices are:

- Appendix - Standard Documents and Templates;
- Appendix - Gateway Reviews;
- Appendix - Procurement Plans;
- Appendix - Contracts for Professional Services – Engagement of Consultants;
- Appendix - Tender Briefings/Site Inspections;
- Appendix - Technical Enquiries Contact Person;
- Appendix - Evaluation Panels;
- Appendix - Contract Management;
- Appendix - Common Use Arrangements;
- Appendix - Buy Local / Free Trade Agreements;
- Appendix - Types of Agreements;
- Appendix - Probity and Accountability;
- Appendix - Foreign Exchange Risk Management;
- Appendix - Disposals;
- Appendix - Exemptions and Approvals – The Open and Effective Competition policy;
- Appendix - Ensuring Effective Competition in a Changing Market;
- Appendix - Market Sounding Guidelines
- Appendix - Sustainable Procurement; and
- Appendix - Glossary of Terms
Purchases up to $50,000

Subject to certain conditions, the SSC’s Open and Effective Competition policy enables public authorities to determine the most appropriate procurement method when their purchase is up to the value of $50,000 (including GST). Based on an assessment of the nature of the market, complexity, risk and process efficiency, public authorities may determine the most appropriate procurement method including direct purchasing, verbal quotations or written quotations.

Direct Purchasing

Identify the requirement (i.e. a product or service).

Explore your procurement options.

Is the requirement available on an existing Agency Contract?  

YES: Purchase in line with the buying rules and process for that contract.

NO:

Could a registered Australian Disability Enterprise (ADE) or a registered Aboriginal business deliver your requirement?  

YES: You can directly source from an ADE or Aboriginal Business under $50,000. Check out abdwa.com.au or adse.org.au to find registered businesses that could meet your requirement.

NO:

Is the requirement available on a Common Use Arrangement?  

YES: Purchase in line with the buying rules and process for that contract.

NO:

Identify a supplier and make the purchase.
Direct purchasing flowchart description:

1. Identify the requirement (i.e. a product or service).
2. Explore your procurement options.
3. Is the requirement available on an existing Agency Contract?
4. If yes, then purchase in line with the buying rules and process for that contract.
5. If no, could a registered Australian Disability Enterprise (ADE) or a registered Aboriginal business deliver your requirement?
6. If yes, then you can directly source from an ADE or Aboriginal Business under $50,000.
7. Check out ade.org.au or abdwa.com.au to find registered businesses that could meet your requirement.
8. If no, then is the requirement available on a Common Use Arrangement?
9. If yes, then purchase in line with the buying rules and process for that contract.
10. If no, then identify a supplier and make the purchase.

Guide Notes:

1. Officers may use their general knowledge of the market, advertisements, in-store price comparisons, catalogues, journals, supplier web sites and any other reasonable means to determine whether the purchase represents value for money.
2. Officers should seek more than one direct quotation if they are not satisfied that their first choice of supplier would represent value for money.
3. The use of purchasing cards is encouraged.
4. Appropriate records of purchases need to be kept. This usually includes a purchase order, receipts or purchasing card statements.
5. Different suppliers should be used from time to time to test value for money for regular purchases.
6. Orders should not be split to avoid competitive processes.
Verbal Quotations

When this procurement method is chosen, agencies should seek verbal quotations from identified capable suppliers.

Identify the requirement (i.e. a product or service).

Explore your procurement options.

Is the requirement available on an existing Agency Contract?

YES

Purchase in line with the buying rules and process for that contract.

NO

Could a registered Australian Disability Enterprise (ADE) or a registered Aboriginal business deliver your requirement?

YES

You can directly source from an ADE or Aboriginal Business under $50,000. Check out abdwa.com.au or ade.org.au to find registered businesses that could meet your requirement.

NO

Is the requirement available on a Common Use Arrangement?

YES

Purchase in line with the buying rules and process for that contract.

NO

- Identify two to five suppliers capable of supplying the required product or service.
- Develop a brief description of the product or service.
- Request quotations by phone, email or face-to-face and give potential suppliers a reasonable amount of time to respond. Advise the suppliers if there are any selection criteria other than suitability of purpose and price.
- Evaluate the quotations.
- Select the successful supplier and provide a brief justification statement on the Finance Verbal Quotation form. A brief evaluation report may be appropriate where there are several qualitative criteria.
- Advise the successful supplier and confirm by sending an order or a written acceptance.
- Advise the unsuccessful bidders.
- Record the details of all quotations requested and received, including the successful supplier’s details. Use the Finance Verbal Quotation form or similar for this purpose.
- Ensure that the successful supplier provides the products or services in accordance with the quote at the accepted price.
Verbal quotation flowchart description:

1. Identify the requirement (i.e. a product or service).
2. Explore your procurement options.
3. Is the requirement available on an existing Agency Contract?
4. If yes, then purchase in line with the buying rules and process for that contract.
5. If no, could a registered Australian Disability Enterprise (ADE) or a registered Aboriginal business deliver your requirement?
6. If yes, then you can directly source from an ADE or Aboriginal Business under $50,000.
7. Check out ade.org.au or abdwa.com.au to find registered businesses that could meet your requirement.
8. If no, then is the requirement available on a Common Use Arrangement?
9. If yes, then purchase in line with the buying rules and process for that contract.
10. If no, then do the following:
   a. Identify two to five suppliers capable of supplying the required product or service.
   b. Develop a brief description of the product or service.
   c. Request quotations by phone, email, or face-to-face and give potential suppliers a reasonable amount of time to respond. Advise the suppliers if there are any selection criteria other than suitability of purpose and price.
   d. Evaluate the quotations.
   e. Select the successful supplier and provide a brief justification statement on the Finance Verbal Quotation form. A brief evaluation report may be appropriate where there are several qualitative criteria.
   f. Advise the successful supplier and confirm by sending an order or a written acceptance.
   g. Advise the unsuccessful bidders.
   h. Record the details of all quotations requested and received, including the successful supplier's details. Use the Finance Verbal Quotation form or similar for this purpose.
   i. Ensure that the successful supplier provides the products or services in accordance with the quote at the accepted price.

Guide Notes:

1. An “appropriate time to respond” for potential suppliers will vary depending on the nature of the purchase. Allow sufficient time for potential suppliers to develop their quotation and confirm in writing, if required.
2. It is good practice to give the suppliers a date and time to get back to you.
3. Should the price of the successful supplier exceed the $50,000 threshold, the Accountable Authority may elect to still award the contract. In assessing this, the Accountable Authority will consider how much the threshold has been exceeded by and the benefits of another competitive quotation process. Where the contract is awarded for $50,000 or more, the award details are to be placed on Tenders WA.
4. If the contract is awarded for $50,000 or more, the requirements of Treasurer’s Instruction (TI) 820 – Register of Contracts may also need to be satisfied. For more information refer to the TI, which is located on the Department of Treasury website in the Financial Administration Bookcase (www.treasury.wa.gov.au/FAB/).
5. Unsuccessful bidders should be advised of the result. A simple email or phone call is sufficient. A letter of decline is not required. Unsuccessful bidders should be provided with the name and total quote amount of the successful bidder.

**Written Quotation**

When the nature of the purchase is complex and/or if there are some market conditions that require competitive written quotations, agencies may use this method for purchasing up to $50,000 (including GST).

For a detailed outline of how to undertake a written quotation refer to Chapter 3.
Purchases $50,000 up to $250,000

Written Quotations

The SSC’s *Open and Effective Competition* policy requires agencies to seek written quotations for purchases $50,000 up to $250,000 (including GST).

The recommended purchasing process is shown in the following flowchart:

- **Identify the requirement** (i.e. a product or service).
- **Explore your procurement options.**
- **Is the requirement available on an existing Agency Contract?**
  - **YES** Purchase in line with the buying rules and process for that contract.
  - **NO**
    - **Could a registered Australian Disability Enterprise (ADE) or a registered Aboriginal business deliver your requirement?**
      - **YES** Contact sp@finance.wa.gov.au.
      - **NO**
    - **Is the requirement available on a Common Use Arrangement?**
      - **YES** Purchase in line with the buying rules and process for that contract.
      - **NO**

- **Develop** a specification using the Finance Written Quote Template Suite of documents.
- **Identify** suppliers capable of supplying the required product and/or service or you can release your quote to the open market if you prefer.
- **Request** written quotations, typically giving the suppliers between three and ten days to respond.
- **Establish** an evaluation panel of two or more appropriately skilled and knowledgeable people.
- **Evaluate** received quotations in accordance with the selection criteria and SSC and government policy requirements and select the recommended supplier.
- **Advise** the successful supplier by sending an order or a letter of acceptance. Advise the unsuccessful bidders in writing.
- **Publish** the contract award details on the Tenders WA system.
- **Manage the Contract** - Ensure that the successful supplier provides the products and/or services in accordance with the specification at the accepted price.
Written quotation flowchart description:

1. Identify the requirement (i.e. a product or service).
2. Explore your procurement options.
3. Is the requirement available on an existing Agency Contract?
4. If yes, then purchase in line with the buying rules and process for that contract.
5. If no, could a registered Australian Disability Enterprise (ADE) or a registered Aboriginal business deliver your requirement?
6. If yes, then contact the Social Procurement Initiatives team at spi@finance.wa.gov.au.
7. If no, is the requirement available on a Common Use Arrangement?
8. If yes, then purchase in line with the buying rules and process for that contract.
9. If no, then do the following:
   a. Develop a specification using the Finance Written Quote Template Suite of documents.
   b. Identify suppliers capable of supplying the required product and/or service or you can release your quote to the open market if you prefer.
   c. Request written quotations, typically giving the suppliers between three and ten days to respond.
   d. Establish an evaluation panel of two or more appropriately skilled and knowledgeable people.
   e. Evaluate received quotations in accordance with the selection criteria and SSC and government policy requirements and select the recommended supplier.
   f. Advise the successful supplier by sending an order or a letter of acceptance. Advise the unsuccessful bidders in writing.
   g. Publish the contract award details on the Tenders WA system.
   h. Manage the Contract. Ensure that the successful supplier provides the products and/or services in accordance with the specification at the accepted price.

Guide Notes:


2. In the Suite, there is a “Guide to Completing the Written Quote Template Suite”. Follow this guide to facilitate the written quotation process. The guide outlines the written quotation process and provides guidance on completing the templates in the Suite.

**NOTE:** The Written Quotes Template Suite of documents are not suitable for certain purchases. These include ICT, cleaning or high risk in nature purchases (refer to section 2 of the guide). For these purchases use the standard procurement templates available at www.finance.wa.gov.au under Government Procurement > Templates and Guidelines > Goods and Services Templates, Guides and Conditions of Contract.

The SSC’s *Open and Effective Competition* policy recognises that in certain circumstances seeking competitive written quotes does not represent value for money. See Appendix – Exemptions and Approvals for more information.
Open Tenders for Purchases $250,000 and above

Where there is no CUA or Agency Contract available, the SSC’s *Open and Effective Competition policy* requires agencies to undertake a competitive process through an open tender for the purchase of products and services valued at $250,000 (including GST) and above. Agencies are also required to involve Finance at the beginning of this process, in accordance with the terms of their partial exemption.

The open tender process is divided into three phases:

- Procurement planning;
- Contract formation; and
- Contract management.

The open tender process is shown in the following flowchart:

Procurement of products and services valued at $250,000 and above (including GST) require a competitive process through an open tender to demonstrate that the purchase represents best value for money.
For most public authorities, their delegation to purchase under the *State Supply Commission Act (1991)* requires the involvement of the Finance for purchases $250,000 and above.\(^2\) You should make contact with the Finance Government Procurement Business Unit at the beginning of the planning phase. Contact the Agency Procurement Services Division for the purchase of all products and services, including information and communication technology projects, and community services. If you are unsure who to contact, refer to the Agency Contact List available on the Finance website at [www.finance.wa.gov.au](http://www.finance.wa.gov.au) under Government Procurement > About Government Procurement > Agency Procurement Services. For regional based agencies refer to the Contacts for Regional Offices List also available on the above website.

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\(^2\) Upon application by the public authority, the State Supply Commission may accredit the partially exempt public authority to procure independently to a higher value. If so accredited, the public authority would be issued with a partial exemption that reflects this higher value.
Procurement Planning

It is important that the purchase is planned in advance. This will ensure an effective value for money outcome that is compliant with supply policy and limits the compliance and administration costs for both public authorities and any prospective suppliers.

Step 1 – Establish the Business Need

Start by clearly defining the need for the purchase and specify what is to be purchased.

Consider the range of purchase options available and the potential sources of supply. Poor identification of needs and suppliers may lead to incorrect products or services being sought or offered, resulting in additional time, effort and cost.

Activities that can assist in establishing the business need include:

- Undertake research to identify purchase and potential suppliers;
- Identify/agree the outcome and determine best purchasing option in terms of policy requirements, risk, cost and other management issues; and
- Preliminary cost-benefit analysis.

Consider whether there is an opportunity to make the purchase from a local supplier. The Buy Local Policy requires public authorities to meet a target of 80 per cent of purchases from local suppliers.

Check availability from Common Use Arrangement or Agency Specific Contract

Check if what you want to buy is available from a Common Use Arrangement or an Agency Specific Contract. You can access information on what is available from the Common Use Arrangements from the Finance website.

If your requirement cannot be sourced from a CUA, determine whether your agency already has a contract in place that will meet your needs.

Refer to the Appendix – Common Use Arrangements for more information.

Market sounding

Market sounding is a research tool to assist in gathering information prior to developing a business case and procurement strategy. Refer to the Appendix - Market Sounding Guidelines for more information.

Gateway Reviews

Premier’s Circular 2016/05 requires public authorities to complete Gateway reviews at appropriate stages for:

- Infrastructure projects valued at $100 million (inclusive of GST) and above;
- ICT projects valued at $10 million (inclusive of GST) and above; and
- Other projects identified by the Department of Treasury.

Public authorities can request a review for a project that does not meet any of the criteria outlined above, but is considered high risk.

Refer to Appendix - Gateway Reviews for more information.
Step 2 – Develop the Business Case

Where a purchase is likely to be high-risk, high-value or of a unique nature, consider developing a business case. The business case defines the scope of the purchase, develops the implementation strategy and ensures that the option selected will meet the public authority’s requirements.

Issues to consider when developing the business case include:

- Identify and appraise options;
- Establish affordability;
- Develop program or project brief;
- Develop the procurement strategy and process to ensure a viable outcome (contract) can be achieved; and
- Obtain endorsement from appropriate forum or authority within your agency.

Finance has developed a standard business case template that can be accessed from the Finance website at www.finance.wa.gov.au under Government Procurement > Templates and Guidelines > Goods and Services Templates, Guides and Conditions of Contract.

Obtain approval to proceed with purchase

It is necessary to obtain the appropriate written internal approval to undertake the purchase. A signed memorandum or email may be sufficient. When seeking approval to proceed with the purchase, ensure that there is an approved budget sufficient to cover the cost of the purchase.

In the case of larger Requests, it is considered best practice to provide potential suppliers with adequate notice through the Early Tender Advice facility on the Tenders WA system (www.tenders.wa.gov.au).

Refer to Appendix – Buy Local / Free Trade Agreements for more information on the timeframes required to meet the FTA obligations for covered procurements.
Step 3 – Procurement Strategy

The following matters in the Procurement Planning phase of the open tender process should be considered in finalising the procurement strategy, prior to commencing the contract formation phase.

Maintaining probity and accountability

Keep any relevant documentation and information on the purchase for audit purposes. You should ensure that the documents are stored in a secure and confidential manner.

Public authorities are obliged to comply with several pieces of legislation relating to record management practices, including the Financial Management Act (2006), Freedom of Information Act (1992) and the State Records Act (2000).

Refer to Appendix – Probity and Accountability for more information.

Exemption from the requirement to competitively tender and other approvals allowed pursuant to the Open and Effective Competition policy

The SSC’s Open and Effective Competition policy allows exemptions from the requirement to competitively tender. That is, a public authority may directly engage a supplier, without going to tender, in a number of circumstances, and only when approved by your public authority’s Accountable Authority.

Some exemptions included in the Open and Effective Competition policy may not be available under the Free Trade Agreements’ obligations and reference should be made to the Free Trade Agreements before proceeding with covered procurements.

In addition, the policy allows Accountable Authorities to:

- Approve the naming of a proprietary product;
- Approve a contract period greater than five years;
- Approve an advertising period less than ten days; and
- Where to do so represents operational risk, choose not to publish contract award details on Tenders WA.

Refer to Appendix - Buy Local / Free Trade Agreements and Appendix - Exemptions and Approvals for more information.

Conduct risk analysis

For each procurement process, it is mandatory to conduct a risk analysis to identify potential problems, the likelihood that they will occur and their consequences.

According to Treasurer’s Instruction 825 “In complying with the Treasurer’s instructions, managers need to focus on material risks at all levels of the organisation and take necessary action to manage those risks. Risk management is an integral part of day-to-day operations and is an important element of effective internal control.”

The Risk Workbook provides practical information and templates to assist government officers to identify and manage risks in products and/or services procurement processes and contracts. The Risk Workbook can be accessed from the Finance website at www.finance.wa.gov.au under Government Procurement > Templates and Guidelines > Goods and Services Templates, Guides and Conditions of Contract.
RiskCover contractual liability cover

RiskCover provides contractual liability coverage to public authorities, which applies automatically unless:

- The public authority waives or limits its right of recovery (ie, agrees to cap liability) or indemnifies another party;
- The indemnity, liability and/or insurance clauses in the Department of Finance Request templates and General Conditions of Contract have been varied or departed from; or
- The contract establishes a joint venture or partnership in which the State is one party of the joint venture or partnership

in which case the cover is voided. Public authorities should notify RiskCover if any of the above situations arises, and RiskCover will evaluate reinstating cover.

Where further information is required, public authorities should contact their RiskCover representative or visit the website at www.riskcover.wa.gov.au.

Review previous purchases

You should review any previous purchases made for similar products and/or services to identify any potential problems and solutions. There may have been issues in the past with the scope or cost of the purchase or with the supplier's ability to deliver.

Consult with your colleagues, particularly the people who will use what is being purchased, as well as subject-matter specialists and other in-house experts.

Consider sustainability

It is important to consider sustainability issues as part of your decision making process. This means meeting a need for goods and services in a way that achieves value for money and generates benefits not only to the organisation, but also to society and the economy, while minimising damage to the environment.

Refer to Appendix – Sustainable Procurement for more information.

Maximise regional sourcing

The Government’s Buy Local Policy requires public authorities to ensure that where purchases are being sought for delivery or use within a specific regional town or region, local businesses have an opportunity to participate. Opportunities for local suppliers to have access to the government marketplace should be given special consideration, particularly outside the Perth region where they can offer value for money.

For more information on Buy Local Policy, refer to Appendix - Buy Local / Free Trade Agreements.

Consider the Free Trade Agreements (FTAs)

Australia is a signatory to the Australia–United States Free Trade Agreement (AUSFTA), the Australia-Chile Free Trade Agreement (ACI-FTA), the Korea-Australia Free Trade Agreement (KAFTA) and the Japan-Australia Economic Partnership Agreement (JAEPAA), which include a range of specific commitments for Government Procurement. Public authorities must conduct covered procurements in accordance with the FTAs. The main commitment that impacts the standard tender process is the use of preference schemes.

A covered procurement is a procurement of products and/or services (not involving construction services) where the total contract value is estimated to equal or exceed the
amount advised by the State Supply Commission. The value is $AU 551,000 (total contract price including the value of any options and GST).

For more information on FTA requirements, access the State Supply Commission website at www.ssc.wa.gov.au.

Also refer to Appendix - Buy Local / Free Trade Agreements for more information.

Planning the purchase and procurement plans

A procurement plan is a comprehensive document that outlines the stages in the project and how they will be managed. This should build upon any business case that may have already been developed.

Refer to Appendix - Procurement Plans for more information.

Finance has developed a standard procurement plan template that can be accessed from the Finance website at www.finance.wa.gov.au under Government Procurement > Templates and Guidelines > Goods and Services Templates, Guides and Conditions of Contract.

Procurement plans for purchases with an estimated total value of $5 Million or more (including GST) must be referred to the State Tender Review Committee for endorsement. Purchases exceeding $5 Million from a Common Use Arrangement also require a procurement plan, unless the relevant Buyers' Guide states otherwise.

Contract management

Contract management is an integral part of the purchasing cycle and needs to be considered early in the procurement process.

Where a purchase will require ongoing management, appropriate contract management and administration requirements including supplier performance management requirements need to be identified and planned and should be relative to the value, complexity and risks involved.

For more information on contract management, refer to Appendix - Contract Management. For information relating to supplier performance requirements, refer to the Supplier Performance Management Framework located on the Finance website at www.finance.wa.gov.au under Government Procurement > I Manage a Contract > Supplier Performance.

There are requirements in TI 820 – Register of Contracts that need to be considered, defined and conducted to build a strong and effective approach to contract management, which includes defining the approach and standards to ensure effective contractor performance reviews. For more information refer to the TI, which is located on the Department of Treasury website in the Financial Administration Bookcase (www.treasury.wa.gov.au/FAB/).

Establish an evaluation panel

When evaluating bids on the basis of a qualitative assessment and the estimated contract value is $250,000 and above, then an evaluation panel of at least three voting members must be convened.

The evaluation panel will assess the responses received against the selection criteria. The evaluation panel must include a range of skills and experience relevant to the nature of the purchase.

Where a Finance Government Procurement representative is assisting public authorities to procure products or services with an estimated contract value of $250,000 and above, then the Finance representative must be involved in the evaluation process. This may be as a facilitator or advisor and/or voting member. The Finance representative will not be the evaluation panel chairperson. Refer to Appendix - Evaluation Panels for more information.
Develop the request and specification

The Request forms part of a legally binding contract. Therefore it is important to ensure that each component of the Request is written in a clear and precise way.

Identify the expected outputs, performance measures and any special considerations in the Request. This will allow potential suppliers to devise innovative solutions when preparing offers during the request stage.

When developing the Request, be sure to consult with your colleagues, take advantage of in-house expertise, and consult with users and subject matter specialists. This will help you to specify:

- Exactly what is required;
- The required quantity and quality;
- Timeframes;
- How the contract is to be managed;
- A contractual and technical contact person. Refer to Appendix – Technical Enquiries Contact Person for more information; and
- Delivery/submission/lodgement instructions.

Accurate specifications are critical to the development of the Request. For this reason it is recommended that you begin identifying the necessary specifications as early as possible.

Before preparing a specification:

- Identify user needs. (Refer to the business case or procurement plan, if available);
- Research the market to determine available solutions, the likely costs and time scales;
- Conduct a risk analysis to identify potential problems and their consequences;
- Determine the scope including the likely demands on a supplier and the range of products and/or services which will be required;
- Determine the contract management and administration requirements including supplier performance management requirements and
- Determine the evaluation criteria to clearly reflect the importance of the specification.

The cost of the tender process can be reduced if the specifications:

- Are standardised for similar requirements;
- Are concise and accurate; and
- Can be readily incorporated into a formal contract.

When developing specifications public authorities should also ensure their specifications comply with relevant legislative requirements, for instance where the products and services are to be provided to the public a Disability Access and Inclusion Plan clause must be included in the Customer Contract in order to comply with legislation.

Finance has developed a standard Request template that can be accessed at www.finance.wa.gov.au under Government Procurement > Templates and Guidelines > Goods and Services Templates, Guides and Conditions of Contract.

Refer to Appendix - Standard Documents and Templates for more information.
Write the specification

The specification is a comprehensive description of the essential requirements for the products and/or services to be purchased. It should detail the nature, type and purpose of the product and/or service required. The specification must be clear, concise, accurate, logical and unambiguous. This ensures that the public authority obtains exactly what it needs and enables different offers to be compared on a like-to-like basis.

There are three main types of specifications:

- Functional specifications which outline outcomes to be achieved;
- Performance oriented specifications which define the performance but not the methods used to achieve them; and
- Technical specifications which detail physical characteristics, such as size, capacity and type of materials required.

Whichever type is chosen, it requires a clear description of the nature of the purchase, and the expected outcomes. When preparing the specifications, include enough information to allow potential suppliers to assess whether they have the capability and capacity to satisfy the requirement. Specifications need to be prepared in such a way as to encourage and promote competition, and not be limited to commercial or brand-specific attributes.

The specification should clearly distinguish between mandatory requirements and those that are merely desirable. All requirements need to consider the approved budget of the purchase, sustainability issues and any specific risks that may be involved.

For complex procurement, a staged approach to developing and refining the specification should be considered. This may involve developing a draft Request and requesting feedback from potential suppliers. However, be cautious of a conflict of interest when seeking advice from the private sector. Providing professional advice on the preparation of a Request may exclude potential suppliers from tendering for the work.

The specification should include other requirements such as warranty, maintenance, delivery or packaging. Contract management and administration requirements including supplier performance management requirements may also be identified such as performance standards and measures, reporting, meetings, transition, relationship and specific task responsibilities.

Develop selection and compliance criteria

Selection criteria are used to assess the suitability of a potential respondent. Requests usually include some or all of the following types:

- Pre-qualification requirements are not point scored, rather, an assessment is made on a yes / no basis. In making this assessment, a potential supplier must comply with every detail of every requirement. Failure to answer ‘yes’ to all of the pre-qualification requirements will eliminate the potential supplier from further consideration;
- Compliance criteria are not point scored, rather an assessment is made on a yes / no basis. In making this assessment, a potential supplier may not need to comply with every detail of every requirement; and
- Qualitative criteria for those potential suppliers that are compliant, an evaluation is then made of each response to the qualitative criteria.

The selection criteria and weightings should be included in the Request document. Selection criteria are the mechanism for assessing offers in terms of their ability to meet the specifications and other requirements of the procurement.
The standardised Request template developed by Finance includes examples of commonly used selection criteria.

The use of appropriate, well-defined selection criteria enables potential suppliers to focus their submissions. This assists the evaluation panel to assess the relative strengths and weaknesses of each potential supplier.

**Obtain approval for an open tender process**

Once the need and specification have been determined, formal approval from your agency is necessary to undertake the purchase.

When seeking approval to proceed with the procurement, you are required to ensure that the approving officer is aware of the estimated cost of the requirement and that there is an approved budget.

It is not acceptable to split a purchase into smaller parcels in order to avoid having to conduct a competitive process.
Contract Formation

If the procurement planning is well managed, then the contract formation should be a smooth process. Best value for money will drive the decision making.

Step 4 – Competitive Procurement

The following describes the competitive process undertaken for open tenders.

Advertise the request

The request period should provide sufficient time to encourage potential suppliers to submit an offer and for the offer to be a competitive offer. When setting the timeframe consider the value, complexity or strategic nature of the Request. As a guide, a common period is four weeks, with two weeks the minimum required by SSC policy.

For covered procurements, Free Trade Agreements require public authorities to provide potential suppliers with a minimum of 25 calendar days to prepare and lodge a submission in response to a tender request. Refer to Appendix - Buy Local / Free Trade Agreements for additional information.

Advertise the Request on the Tenders WA system (www.tenders.wa.gov.au). The Request document should be attached for download by potential suppliers. We strongly recommend that potential respondents to your Request are only able to source your Request through Tenders WA. You may choose to make the Request document available for collection, or available by email or post. If potential respondents are able to source copies of your Request document from anywhere other than Tenders WA, please ensure the details of those who collected or were emailed/posted your Request are recorded in Tenders WA. If the details of these potential respondents are not recorded in Tenders WA, they will not receive any addenda to the Request.

For non-routine or complex procurements, it may prove beneficial to issue the draft Request to industry for comment before it is formally released to the market. This allows potential suppliers to advise whether the documentation is deficient, onerous or biased and to advise how it may be improved. However, be cautious of a conflict of interest when seeking advice from the private sector. Providing professional advice on the preparation of a Request may exclude potential suppliers from tendering for the work.

A briefing for potential suppliers can be held to provide them with an overview of the Request and what is being sought. The briefing also provides an opportunity for potential suppliers to clarify issues before the Request’s closing date. If attending a briefing session is mandatory for suppliers, this should be clearly stated as a pre-qualification requirement. The legal entity recorded in the attendance register must match the name of the entity submitting the offer.

Refer to Appendix – Guidelines for Tender Briefings/Site Inspections for more information.

Record all enquiries from potential suppliers. Where the enquiry requires a change to the Request, issue an addendum to the potential suppliers. Where potential suppliers seek clarification, this process should be managed in such a way as to not give one potential supplier an unfair advantage.

Refer to Appendix – Technical Enquiries Contact Person for more information.
Receive and record offers

An authorised officer should be responsible for the tender opening process. Offers must be held in a secure location. During the opening process it is recommended that at least two officers should be present. The procedures for the receipt, opening and registration of offers must safeguard their security and confidentiality. Be mindful of probity issues associated with late offers.

Contact Tendering Services on tenderringservices@finance.wa.gov.au or (08) 6551 2345 for further information and advice on best practice in the tender opening process.

Retain all relevant documentation and information, particularly the offers themselves, on file in a secure and confidential manner for audit purposes and to protect the interests of suppliers. It is worth remembering at this point the legislation relating to record management practices, including the Financial Management Act (2006), Freedom of Information Act (1992) and the State Records Act (2000).

Evaluate offers

Now that the responses have been received, it is time to evaluate the offers. It is time to convene the evaluation panel and review the offers. Finance has developed templates to assist with the process. The Finance member of the evaluation panel will facilitate the process.

The Finance evaluation handbook template provides a format and methodology for rating the responses according to the selection criteria. The evaluation handbook should be prepared and the evaluation methodology and scoring agreed to by the evaluation panel before the Request’s closing date.

Following completion of the tender evaluation process, prepare an evaluation and recommendation report recording the reasons for the evaluation panel’s recommendation. Reasons for the recommendation, and for the passing over of any lower priced offers, must be clearly documented and supported. The report should be a complete account of the evaluation and must be able to stand up to independent scrutiny.

Finance has developed a standard evaluation handbook template and a standard evaluation report template and both can be accessed from the Finance website at www.finance.wa.gov.au under Government Procurement > Templates and Guidelines > Goods and Services Templates, Guides and Conditions of Contract.

Evaluation reports for purchases of $5 Million or more

Evaluation reports for purchases of $5 Million or more (including GST) must be submitted to the State Tender Review Committee for endorsement. Endorsement provides the public authority with confidence that the process used to select the recommended supplier is robust. The Finance member of the evaluation panel will facilitate the review.

Purchases from a Common Use Arrangement are not exempt from this process, unless the relevant Buyers’ Guide states otherwise.

Undertake due diligence

Due diligence is a formal stage during contract negotiations and management in which both parties have an opportunity to test their expectations and understanding of the contract. The due diligence phase is where false assumptions should be identified, with subsequent negotiations resolving any misunderstandings. This may include independent verification of accounting records, assets and sites.

Experience has shown that failure to conduct a thorough due diligence process substantially increases the risk of contract failure.
Formal due diligence will not usually be required for simple, routine or low-risk contracts.

**Conduct negotiations**

Public authorities must ensure the confidentiality of offers is maintained. If it is necessary to negotiate, these negotiations should commence with the preferred supplier. Negotiations must not involve trading-off one respondent’s price against other potential supplier’s prices.

Where negotiation is necessary, it is recommended that you establish a negotiation team that will develop a negotiation strategy prior to undertaking any discussions with the preferred supplier.

All details and correspondence relating to the negotiation must be recorded on the relevant file.


**Step 5 – Award and Implement Contract**

Once the competitive procurement process is complete the contract can be awarded. The following items relate to the award and implementation of the contract.

**Obtain approval to award contract**

The conduct of a competitive process through an open tender does not constitute approval to award a contract. Once the evaluation of offers has been completed, all relevant departmental approvals for procurement processes and financial expenditure must be obtained.

Once that has been done, the authorised officer will formally notify the contract award to the successful respondent.


**Notify unsuccessful suppliers**

Formally notify the unsuccessful suppliers. A public authority must provide unsuccessful suppliers with the name and total contract value or total estimated contract value of the successful supplier.

Upon request, you must also provide a debriefing to unsuccessful suppliers. To maintain confidentiality of commercial information, this debrief should be limited to an examination of the unsuccessful supplier’s offer against the evaluation criteria only and should not involve direct comparison between suppliers.

Publish contract award

Where the awarded contract price is $50,000 and above (including GST), a public authority must publish the contract details on the Tenders WA system after the successful supplier has been notified.

A public authority is not required to publish contract details if:

- The Accountable Authority considers that the release of those contract details presents a significant operational risk, such as the potential to compromise security; or
- A relevant CUA Buyers' Guide states that contract award details are not required to be published on Tenders WA.

Treasurer’s instruction 820 – register of contracts

Ensure the requirements of TI 820 – Register of Contracts are satisfied. For more information refer to the TI, which is located on the Department of Treasury website in the Financial Administration Bookcase (www.treasury.wa.gov.au/FAB/).
Contract Management

The extent of contract management required will depend on the value, complexity and risk. However, pro-active contract management is always required, right through to the closure of a contract.

Step 6 – Manage Contract

Contract management including supplier performance management is an integral part of the purchasing cycle and should include all aspects relative to the value, risk and complexity of the contract. The contract administration arrangements should be identified and planned when the specification is prepared. This includes delegations, reporting requirements and relationships, and specific task responsibilities.

Contract Management Plans

A formal contract management plan is required for contracts valued at $5 Million or above (including GST). It is also recommended that a contract management plan be put in place for lower value contracts that are deemed high risk. A formal plan is not required for simple or low risk procurement. A contract management plan incorporates transition management, performance monitoring and ensuring that both parties fulfil their commercial and contractual commitments.

Contract management plans for procurements valued at $5 million and above must be referred to the State Tender Review Committee for endorsement.

Contract Variations

It is important that the State is open and transparent about its expenditure on government contracts. Where an agency varies a contract (either through a single variation or a number of variations) and that variation leads to a price increase of:

- $50,000 or more above the original contract value recorded on Tenders WA, then the variation must be recorded on Tenders WA;
- $250,000 or above, then partially exempt agencies must submit a contract variation memo to the Department of Finance for comment; and
- $5 million or above, then partially exempt agencies must submit a contract variation memo to the State Tender Review Committee through the Department of Finance for comment.

Finance has developed a standard contract management plan template and a contract variation memo, both of which may be accessed from the Finance website at www.finance.wa.gov.au under Government Procurement > Templates and Guidelines > Goods and Services Templates, Guides and Conditions of Contract.

If there is a requirement for extending or finalising a contract, it is essential that the appropriate actions be taken prior to the contract expiry date. Careful and timely planning will ensure that there is continuity in the provision of the products and/or services where required.

3 Unless a partially exempt agency has been accredited to a higher involvement value – then that value.
Payments and P-Cards

The purchasing card is a useful payment tool. It reduces bureaucracy and saves money, enhances purchasing controls and provides increased transparency.

Purchasing cards help maximise savings through the elimination of requisitions, hard-copy orders and reduce processing costs (estimated to be between $19 and $52 per transaction). Cardholders can deal directly with suppliers, within the pre-determined spending limits. The ideal transactions suitable for card payment are all purchases under $5,000.

The Treasurer has encouraged all public authorities to review business processes and develop strategies to increase the use of the government purchasing card. The Treasurer has endorsed a procurement strategy aimed at resolving barriers to the wider adoption of purchasing cards. This strategy aims to significantly increase the proportion of government purchases made on purchasing cards.

When selecting a supplier, public authorities should take into consideration whether the supplier accepts payment by purchasing card.

Step 7 – Closure and Review

A contract review process should be conducted at the completion of the contract, and prior to or concurrently with any new contract process. The outcome from this process should establish a clear understanding of future requirements and the information necessary to select the best course of action. A new contract should be tendered and awarded prior to the completion of the current contract where there is an ongoing need for the products and/or services covered by the existing contract. The commencement of the new contract should coincide with the expiry of the existing contract.

Finance has developed two contract review templates that can be accessed from the Finance website at www.finance.wa.gov.au under Government Procurement > Templates and Guidelines > Goods and Services Templates, Guides and Conditions of Contract.

For more information and guidelines on good contract management, see Appendix - Contract Management.
Appendix – Standard Documents and Templates

The Finance Government Procurement business unit maintains a range of standard documents and templates in support of the Procurement Practice Guide. These documents and templates provide practical assistance to public authorities in all phases of the contracting process - from planning and forming a contract through to its operational management.

The documents and templates provide a standard format across the public sector, which will give consistency and efficiency to both buyers and suppliers in government contracting.

Finance Government Procurement is the custodian of the development and ongoing management of the documents and templates in conjunction with the State Solicitor’s Office.

These documents and templates are mandatory for purchases where Finance manage the administrative aspects of the purchase in accordance with arrangements that the Director General, Department of Finance has agreed with public authorities.


If you have any queries about these documents or templates, please contact the Finance Procurement Policy and Governance Unit at procurementpractice@finance.wa.gov.au or (08) 6551 1500.
Appendix – Gateway Reviews

Mandatory Gateway reviews

Premier’s Circular 2016/05 requires public authorities to complete Gateway reviews at appropriate stages for:

- Infrastructure projects valued at $100 million (inclusive of GST) and above;
- ICT projects valued at $10 million (inclusive of GST) and above; and
- Other projects identified by the Department of Treasury.

Public authorities with projects that meet any of the criteria outlined above are required to contact the Department of Finance at the earliest opportunity in the project life cycle, and definitely before business case approval.

Public authorities can request a review for a project that does not meet any of the criteria outlined above, but is considered high risk.

Exemption from mandatory review

Where a project meets any of the criteria outlined above, and a public authority does not wish to undertake a review, the public authority may apply for an exemption. Public authorities seeking an exemption must complete a risk assessment, and forward the assessment to Finance for consideration. Please contact the Finance Gateway Unit for the risk assessment document.

Review process

A Gateway review process examines key decision points or ‘gates’ that naturally arise in a programs and projects lifecycle. Six decision points form the structured methodology for the Gateway process:

- Strategic Assessment - to confirm business strategy and need;
- Business Case - to confirm business justification;
- Readiness for Market - to confirm procurement method and sources of supply;
- Tender Decision - to confirm investment decision;
- Readiness for Service - to confirm the readiness of the organisation to implement the business changes; and
- Benefits Evaluation - to confirm ‘in service’ benefits.

The primary purpose of a review is to add value to the project team’s existing expertise and by offering recommendations aimed at successful delivery of the project.

A team of 3-4 independent reviewers from the public and private sector conduct reviews. In a short period consisting of between 3-5 days, reviewers examine project documentation and interview stakeholders to assess the strength of project management controls, governance and stakeholder management for the project’s life stage.
The agency project owner or Senior Responsible Owner (SRO) is then presented with a final report, providing recommendations along with a Red Amber Green (RAG) coding for each one. The RAG rating system is based on the critical and urgent action required to implement recommendations for successful project management and delivery performance.

For further information on Gateway reviews and the process visit the Finance website at: http://www.finance.wa.gov.au/cms/Government_Procurement/Gateway/Gateway.aspx or contact the Finance Gateway Unit at Gateway@finance.wa.gov.au.
Appendix – Procurement Plans

A procurement plan is a comprehensive document that outlines the stages in the project and how they will be managed. This should build upon any business case that may have already been developed.

Procurement plans for purchases with an estimated total value of $5 Million or more (including GST) must be referred to the State Tender Review Committee for endorsement. Purchases exceeding $5 Million from a Common Use Arrangement also require a procurement plan, unless the relevant Buyers’ Guide states otherwise.

However, the policy does allow a public authority’s Accountable Authority to decide, for a particular procurement, that a procurement plan is not required because it would be of no benefit due to the nature of that procurement.

Finance has developed a standard procurement plan template that can be accessed from the Finance website at www.finance.wa.gov.au under Government Procurement > Templates and Guidelines > Goods and Services Templates, Guides and Conditions of Contract.

The template provides a step-by-step guide to the elements that make up a procurement plan. Broadly, these elements are grouped into the following areas:

- Summary of the proposed procurement;
- Description of the current contract arrangements;
- Proposed procurement timetable;
- Risk analysis;
- The Buy Local Policy;
- Procurement research;
- Procurement methodology and strategy; and
- Contract management.

Any public authority planning a purchase should refer to the procurement plan template for the complete requirements.
Appendix – Contracts for Professional Services – Engagement of Consultants

The engagement of consultants is appropriate when specific skills, knowledge or expertise are required to carry out certain functions and are not available within an organisation or elsewhere within the public sector.

It is generally not appropriate to engage consultants:

- For management or decision making as these tasks are the responsibility of the public authority’s executive;
- Where it is reasonably believed that a conflict of interest could develop;
- To resource long-term projects or ongoing core activities;
- To perform tasks which would be more cost-effective and appropriately resourced in-house; or
- Where the appropriate expertise exists and is available within the public sector.

In May 2016 the Premier issued Premier Circular 2016/02 – Contracts for Services – Consultants which sets out Public Authorities’ obligations with respect to engaging consultants. For Contracts for Services for consultants providing strategic advice for Government to act on with a total estimated value of $50,000 (including GST) and above, public authorities are to obtain an approval from Department of Premier and Cabinet (DPC) prior to commencing procurement processes associated with the establishment of contractual arrangements with external parties.

Public authorities may engage consultants when there is:

- Insufficient or unavailable expertise in the relevant area within the public sector at the time of need;
- A requirement for neutrality, impartiality and a high level of objectivity (external to the public authority or the public sector); and
- A need to draw on expertise and specialised skills available only from external sources.

When engaging consultants, a public authority should develop specifications that should include elements such as:

- Description/objectives of the project and function and boundaries of the consultancy;
- Outcomes/deliverables (e.g. reports, recommendations, seminars, workshops);
- Project time frame, including milestones, deadlines and completion date;
- Project methodologies and management requirements;
- Required knowledge, expertise, experience, interpersonal skills;
- Costing requirements e.g. fixed cost, daily or hourly rates, incidentals etc;
- Proposed payment schedule;
- Professional indemnity, public liability and workers compensation insurance;
- Intellectual property; and
- Quality requirements.
Costing profile

To facilitate the comparison of the various consultants’ responses to your tender (their offer), it is necessary to ensure that all offers are based on the same pricing structure.

Wherever possible, a fixed cost for a specific task should be sought from prospective consultants. This pricing framework makes it easier to compare various bids in the selection process, to manage the consultancy and to make progress payments at appropriate milestones if outlined in the consultancy brief.

Prospective consultants can be asked to provide a breakdown of their offer into basic fees and other costs (e.g. travel, accommodation, equipment hire). This breakdown should indicate the number of hours or days represented by the basic fee. If a breakdown is not possible, as the overall time required could not be estimated, fees and payments should be based upon established milestones or deliverables as a basis for control and as a means for maintaining the project schedule.

If hourly rates are specified, as might be the case for panel or period arrangements, then the hours should be capped to a maximum total for the project.

Requesting that the proposal contain a schedule of fees may be more appropriate for some consultancy tasks or professions, e.g. the legal profession. It is critical to ensure that the costing requested can be compared during the selection process.

Rates for out of pocket expenses and reimbursement arrangements should be agreed to and set out in the conditions of contract prior to awarding a contract. Typical expenses may include travel and accommodation costs, however, any resemblance to salary or wages or other forms of remuneration must be avoided.

The employer-employee relationship

When engaging an individual or individuals - as opposed to a corporation or partnership - the relationship will be either a contract of personal service (employment) or a contract for the provision of services (independent contractor).

When engaging consultants, public authorities must ensure they do not inadvertently create a contract of employment when it is intended to establish a contract for the provision of services.

The service required should be related to a single task, wherever possible, rather than an ongoing working relationship and the contract must state that the engagement is for a fixed and limited time frame.

Consultants should not be paid by way of salary, wages, annual remuneration, award rates or anything similar. They should also provide their own plant, equipment, tools etc and take out their own personal sickness, accident, workers compensation, public liability and professional indemnity insurance.

Determining the correct employment status of individuals who provide services to a public authority is important as penalties may be imposed on the employer for failure to deduct or remit tax as required under the *Income Tax Assessment Act (1936)*. Bona fide corporations or partnerships cannot become employees of a public authority therefore PAYE tax is not applicable.
Under the *Income Tax Assessment Act (1936)* and other legislation such as *Workers Compensation and Injury Management Act (1981)* and the *Superannuation Guarantee (Administration) Act (1992)* individuals primarily providing skill/labour may be deemed to be “employees” even if the arrangement is called a contract for the provision of services (as opposed to an employment contract).

**Intellectual Property (IP)**

Intellectual property (IP) includes all copyright and rights in relation to inventions (including patented inventions), industrial designs, registered and unregistered trademarks, plant varieties, confidential information (including trade secrets) and circuit layouts.

Examples of IP that may be produced during the course of a consultancy include:

- Computer source code (computer programs) which are considered literary works;
- Graphics or logos;
- Reports, publications, videos, multimedia products, photographs, plans and construction drawings; and
- Patentable inventions.

**IP created during the consultancy**

It should be noted that even if a public authority has paid the consultant, it does not necessarily mean that the public authority will own any IP created in the course of that consultancy. For this reason the public authority’s and the consultant’s rights in relation to IP should be clearly stated in the quotation or tender specification and conditions of contract.
Appendix – Tender Briefings/Site Inspections

Tender briefings (or site inspections) may be required for purchases that are complex, high risk, unique, high value and/or strategic.

Briefings may be mandatory or non-mandatory and may be conducted prior to the tender being advertised (pre-tender), or while the tender is open. Pre-tender briefings are generally held for Common Use Arrangements (CUAs), or strategic contracts. For other contracts the decision to hold briefings must be made on a case by case basis.

If briefings are mandatory, then attendance at briefings must be included as a pre-qualification criterion in the Request document. Bids from suppliers that do not attend a mandatory pre-tender/tender briefing cannot be considered.

Careful consideration should be given to making attendance at pre-tender/tender briefings mandatory due to the serious ramifications for respondents failing to or unable to attend (particularly if interstate or overseas bids are expected – a mandatory briefing could be seen as anti-competitive or expensive to attend).

Non-mandatory briefings are the preferred method where a briefing is determined to be appropriate to assist respondents in completing their bids.

Planning for a Pre-Tender briefing

Based on the information provided above, a decision needs to be made by the evaluation panel in the planning stages of the procurement, as to the relevance and benefits of having a pre-tender/tender briefing.

Once the evaluation panel has decided to hold a mandatory or non-mandatory pre-tender/tender briefing, the details of the briefing should be inserted into the quote/Request document. An example of the notice is included in Finance’s Request documents.


Choosing the date for the Pre-Tender briefing

- Briefings should be scheduled to allow sufficient time for prospective respondents to familiarise themselves with the tender document and make arrangements to attend the briefing session (particularly if interstate or overseas suppliers are likely to bid); and

- Adequate time should be allowed following the briefing session to provide respondents with the opportunity to clarify any issues with the contact person prior to the closing of the tender.

Arrangements for the Pre-Tender briefing

- Prepare an agenda or session plan. This will help you to focus on how you want the briefing session to proceed;

- Ensure that the room is an adequate size with sufficient seating for the attendees (allow for two persons from each organisation even though you ask for only one to attend);

- Arrange for and test any presentation aides you intend using e.g. overhead projector, laptop;
- Arrange for someone to take notes at the briefing; and
- Inform reception of the briefing i.e. date and time, where it is going to be held, how many visitors to expect and who to notify when the visitors arrive.

**Conducting a Pre-Tender/Tender briefing**

- A record of attendees must be taken. For a mandatory pre-tender briefing, inform attendees that in order for their offer to be considered valid, they must register under the legal entity (name) in which they intend to submit their offer. This is particularly relevant in relation to consortium bids. Failure to comply will result in a respondent's offer not being considered;
- Explain the layout and information provided in the Request document, in particular, the underlying reason for calling the briefing e.g. capacity to meet strict specification requirements and/or timeframes; unusual number of special conditions; type of contract is new to government;
- All questions and answers from the briefing session are to be recorded;
- Any amendment or clarification of an issue should be circulated to all eligible prospective respondents via a formal written addendum;
- All questions received **post briefing** should be directed to the relevant “contact person” named in the quote/Request document. Any information that is provided post briefing should be general in nature or for clarification purposes only. If a respondent raises a specific issue that is likely to give them a competitive advantage over other respondents, then that information should be made publicly available to all respondents via a formal written addendum.
Appendix – Technical Enquiries Contact Person

Public authorities are required to consider the State Supply Commission’s *Open and Effective Competition* policy and *Probity and Accountability* policy when providing advice to potential respondents. They are also required to nominate a technical contact person within the Request document for a tender process. It is important for that person to read this Appendix and to contact the Department of Finance Procurement Manager if they have any questions.

The State Supply Commission’s supply policies can be accessed at: www.ssc.wa.gov.au

Background

The State Supply Commission has published a range of policies. The *Open and Effective Competition* policy and *Probity and Accountability* policy need to be considered when providing advice to potential respondents.

Open and Effective Competition

The State Supply Commission *Open and Effective Competition* policy states the following “Applying open and effective competition provides suppliers with fair and equitable access to government supply opportunities whilst maintaining the transparency and integrity of government procurement”.

Probity and Accountability

In addition, the following comments in relation to behaviour must be taken into consideration:

- “Public authorities must be able to demonstrate to suppliers and the community that they conduct their procurement activities with high standards of probity and accountability”;
- “Probity” requires that public authorities conduct their procurement activities ethically, honestly and fairly”; and
- “Accountability” requires that public authorities be able to publicly account for their decisions and take responsibility for the achievement of procurement outcomes.

Therefore, all public sector buying staff or procurement officers need to ensure all dealings with buyers would withstand public scrutiny on probity and accountability.

Providing Advice to Potential Respondents

Optima Centre Tendering Enquiries

Questions regarding accessing/receiving Request documents or how/when to submit Request documents should be referred to Tendering Services at the Optima Centre on (08) 6551 2020. If the public authority has their own established physical and/or electronic tender box, these questions should be directed to the contractual/routine enquiries person nominated in the Request/quote document.

Request Contractual or Policy Enquiries

Questions regarding the Request, or contractual or policy enquires should be referred to the contractual/routine enquiries person nominated in the Request/quote document.
Straight Forward Technical Questions Regarding the Specification/Scope of Works

The technical enquiry contact can respond verbally to technical enquiry questions if:

- The question does not require further clarification in the Request document; and/or
- There is no new information provided.

Questions Requiring Further Information or Clarification

Where questions result in an answer that:

- Necessitates clarification of the Specifications/Scope of Works;
- Includes information that is not included in the Request document; or
- May give any respondent an advantage over other respondents

then an addendum to the tender/Request must be issued.

If it is necessary to issue an addendum the technical enquiries contact should inform the contractual/routine enquiries person nominated in the Request/quote document.

It is important to note that the Request closing date may need to be changed if an addendum is issued towards the end of the tendering period and a substantial change to the Request document has occurred.

Questions Register Form

The technical enquiries contact should keep a register of all questions received. An example register form is shown below.

It is good practice to also ask potential respondents to e-mail more complex questions to the contractual and routine enquiries contact stipulated in the Request/quote document.

The potential respondent should be informed that the answer to their questions will be responded to and that they may be issued as an addendum to all potential respondents to ensure equity and fairness between all bidders.

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Appendix – Evaluation Panels

Public authorities are required to establish an evaluation panel for purchases above $50,000 or where the evaluation of the bids is based on a qualitative assessment of selection criteria.

The evaluation panel will assess the bids received against the selection criteria. The evaluation panel must include an appropriate mix of skills and experience relevant to the nature of the purchase.

The Finance evaluation handbook template provides a format and methodology for rating the responses according to the selection criteria. The evaluation handbook should be prepared and the evaluation methodology and scoring agreed to by the evaluation panel before the Request’s closing date.

The following provides an overview of the roles and responsibilities of evaluation panels, and identifies useful insights into the issues that panels need to consider. For more information and advice regarding evaluation panels, you should make contact with Finance Government Procurement. Contact the Agency Procurement Services Division for the purchase of all products and services, including information and communication technology projects and regional procurement.

Objectives

The key objectives of the evaluation panel are to:

- Make a recommendation to the Accountable Authority (that is, the public authority or agency) as to the supplier/s that best represents value for money;
- Ensure the assessment of responses is undertaken fairly;
- Ensure adherence to Government procurement policies; and
- Ensure that the requirements specified in the Request are evaluated in a way that can be measured and documented.

Recommendations

The evaluation panel does not make the contract award decision. The Accountable Authority makes the final decision and awards the contract. If the Accountable Authority does not agree with the evaluation panel recommendation then:

- The recommendation can be referred back to the evaluation panel to review/reconsider; or
- The Accountable Authority can overrule the recommendation and award the contract on the basis of what he/she believes represents better value for money.

In either case, detailed supporting documentation justifying the final decision must be recorded.
When Should an Evaluation Panel be Used

When evaluating bids on the basis of a qualitative assessment and the estimated contract value is $50,000 up to $250,000, then an evaluation panel of at least two voting members must be convened.

When evaluating bids on the basis of a qualitative assessment and the estimated contract value is $250,000 and above, then an evaluation panel of at least three voting members must be convened.

Where a Finance Government Procurement representative is assisting public authorities to procure products or services with an estimated contract value of $250,000 and above, then the Finance Representative must be involved in the evaluation process. This may be as a facilitator or advisor and/or voting member. The Finance representative will not be the evaluation panel chairperson.

Evaluation panel members should possess a range of skills and experience relevant to the nature of the purchase. Non-public servants that are engaged to provide technical advice or specialist expertise should be designated as an ‘advisor’ and not have voting rights. Refer to the SSC Buyer Alert “Industry Representatives on Evaluation Panels - February 2003” available from www.ssc.wa.gov.au.

Procedures and Principles for Evaluation

Public authorities engaged in purchasing products and services from the private sector must ensure that their evaluation process meets appropriate probity standards.

Evaluation panels are part of these processes, so it is important that panel members are aware of the principles underlying probity.

Why Should Evaluation Panel Members be Concerned About the Process?

There are two main reasons why members of the evaluation panel should be concerned:

- Potential suppliers are entitled to a fair process; and
- Failing to follow a fair process may lead to a judicial review, with a re-tender being required – this would be costly in terms of time and resources.

What are the Requirements of Fairness?

The following principles must be adhered to in the evaluation process.

**Appropriate knowledge**

Before commencing on the evaluation process, the evaluation panel and any supplementary members should have an understanding of:

- The contents of each response;
- The selection criteria against which responses will be rated; and
- The process by which each response will be rated.
Relevant considerations

The evaluation panel and any supplementary members should consider all relevant considerations related to each response. This would include the supplier's responses to the selection criteria and all other information suppliers were required to provide. In determining value for money, the panel should also consider any other matters that it considers relevant, e.g. risks associated with the response, financial capacity and capability of the potential supplier.

Irrelevant considerations

The evaluation process must not be based on irrelevant considerations. This includes hearsay, anecdotes, personal or unsubstantiated views of panel members and information that is not directly relevant to the Request.

Bias

The evaluation process must be free of bias and any perception of bias. Any connections between an evaluation panel member and a potential supplier must be disclosed to the evaluation panel chairperson. Evaluation panel members and supplementary members should not accept gifts from a potential supplier and should limit contact with potential suppliers during the evaluation process.

Any possible issue of bias should be discussed with the evaluation panel chairperson as soon as it arises.

Evidence of probity

Evaluation ratings and selections must be made on the basis of the material requested and included in the response, together with information obtained through meetings, presentation, and clarifications.

Confidentiality

The contents of each response should not be disclosed to any party outside of the formal evaluation process. Each response should be viewed as commercially confidential information. As such, the facilitator of the evaluation panel should collect all responses and completed evaluation handbooks after the final evaluation meeting.

Commenting during the evaluation process

The evaluation panel chairperson is the only person permitted to comment to outside parties about the evaluation process and outcome. The evaluation panel and any supplementary members should not discuss any element of the evaluation process with work colleagues or any other party.

Recording of response scores

The evaluation panel must fully record their evaluation against the selection requirements or criteria.
Conclusion

By observing and implementing these guidelines, the evaluation panel and any supplementary members will ensure that the evaluation process is open, defensible and auditable.

Following these guidelines not only ensures that the evaluation process is fair, but also helps to ensure that the best value for money outcome is achieved.

Declaration of Confidentiality and Interest:

Evaluation panel members may be required to complete a Declaration of Confidentiality and Interest statement. Once completed, please provide to the chairperson of the evaluation panel.
Appendix – Contract Management

A contract management plan incorporates all of the pertinent information about how the contract is to be managed and monitored. It is a dynamic document that should be started during the procurement planning stage, further developed and finalised during the contract formation stage, and then utilised and modified (as required) throughout the management of the contract.

Finance has developed a standard contract management plan template that can be accessed from the Finance website at www.finance.wa.gov.au under Government Procurement > Templates and Guidelines > Goods and Services Templates, Guides and Conditions of Contract.

Contract management plans for purchases with an estimated total value of $5 Million or more (including GST) must be referred to the State Tender Review Committee for endorsement. Purchases exceeding $5 Million from a Common Use Arrangement also require a contract management plan, unless the relevant Buyers’ Guide states otherwise.

Contract management plans should also be developed for lower value contracts if they are considered to be of a medium or high risk.

However, under SSC policy, a contract management plan is not mandatory for procurements with an estimated total value of $5 Million and above, where the Accountable Authority decides:

- That the relevant plan would be of no benefit due to the nature of that procurement; or
- The purchase is a one-off good and/or service that is not the subject of a period contract arrangement.

The ongoing requirements of TI 820 – Register of Contracts will need to be completed as part of the management of a contract. This includes the scheduling and manner of contractor performance reviews that were considered and defined in the planning and formation stages of the procurement process. For more information refer to the TI, which is located on the Department of Treasury website in the Financial Administration Bookcase (www.treasury.wa.gov.au/FAB/).


Step 1 - Manage transition

Transition refers to the changeover from:

- One contract to another; and/or
- From one contractor to another; or
- The induction of an inaugural contract.

If there is an incumbent contractor, the transition to a new one will require planned management.

Transition tasks include:

- Identifying potential transition issues, risks and strategies to manage them;
- Developing a contract transition plan outlining tasks, timeframes and resources;
Establishing who is going to manage the transition process, whether an individual or a transition management team if appropriate;

Establishing a communication strategy if required; and

Implementing the transition management plan.

Transition planning procedures should be developed where:

- The contract will result in assets or intellectual property that will become the property of the public authority;
- Security arrangements are required; and
- There is an ongoing service requirement.

The contract manager must have the necessary authority to administer contractual matters. Effective contract management will ensure the parties meet their contractual obligations and the contract provides value for money.

As soon as possible after the award of a contract, the contract manager should convene a contract management meeting with the contractor, public authority representatives and appropriate stakeholders. The purpose of this meeting is to ensure all parties have a common and clear understanding of their responsibilities and obligations. This meeting is important to establish good working relationships. Regular contract management meetings should be held.

Good contract management and regular clear communication between the parties should solve problems as they arise. Misunderstandings or disagreements should be resolved as quickly as possible. Use the mechanism for resolving issues specified in the contract. Alternative dispute resolution techniques should be used rather than litigation.

The contract management plan should be finalised and implemented, and all contract management processes and activities agreed to.

The contract now moves into the contract operation stage in which the contract is actively managed.

**Step 2 - Contract operation**

Contract administration arrangements should be identified and planned when the specification is prepared. This includes delegations, reporting requirements and relationships, and specific task responsibilities.

The contract manager should be appointed prior to the formation of the contract. This position is required for the length of the contract and the contract manager must have the appropriate skills, responsibility and accountability. Their role is to:

- Understand the overall scope and nature of the contract, its primary objectives, and the risks involved;
- Act with due care and diligence and observe all accounting and legal requirements during the course of the contract. This includes compliance with SSC policies and any other relevant government policies;
- Maintain continuity of supply, ensure compliance with specified customer expectations and contract deliverables, and manage breaches of contract; and
- Report against defined deliverables through performance measures and benchmarks.
Contract reporting

Fundamental to the management of any contract is the establishment of a reporting system that provides the contract manager with all the information required to ensure risks are managed and successful outcomes are achieved.

To achieve these objectives, contract reports must be relevant, succinct and timely, and should include:

- Financial reporting requirements to address the needs of the contract manager, the public authority executives and financial controllers;
- Technical reporting requirements to cover the technical aspects of the project, including standards of reliability, safety, performance criteria; and
- Contractual reporting requirements to include reports on performance against specifications, allocation of resources, costs for work performed and other contractor evaluations.

Review meetings

The scope and frequency of meetings to review contract performance may vary, but should include:

- Regular progress review meetings. Attendees should include key project team members such as public authority representatives, customer and contractor representatives. Discussions should include performance trends, impending contract events or milestones, changes to user demands and proposed actions/responses to current or potential problems;
- Technical meetings conducted when required between technical representatives of the contract management team and the contractor to review reports and performance data and discuss current issues; and
- Longer-term reviews and audits to determine the extent to which requirements are being met and how to address any emerging or anticipated needs for change. Issues to consider in these ‘whole contract’ reviews include the achievement of objectives, output versus budget, user satisfaction level and the extent to which value for money is being achieved.

Managing problems

However good the relationship is between the public authority and contractor, problems can still arise. Many can be resolved quickly and fairly without affecting operations, through discussion and negotiation.

Prompt action must be taken if monitoring reveals that contractor performance does not meet the agreed standards. Strategies designed to deal with poor performance are fundamental to the management of every contract and can range from agreed problem-solving mechanisms to enforcing the contract conditions, or as a last resort, terminating the contract.

Contractors should be made aware of any shortcomings as they occur, if necessary, in writing. This enables issues to be clearly identified and addressed by all parties and, if required, provides an opportunity for the contractor to improve performance during the period of the contract. It also acts as a verification of performance, which can be referred to when a contract is up for extension or renewal.
The aim should be to ensure cooperation and a mutual desire to resolve the problem at the lowest practical level. Cooperative problem solving and arbitration are preferable for managing contract breaches and disputes, with litigation being the last resort.

The audit trail

Public authorities must ensure accountability by maintaining documents and records of key contract management decisions. Such records are invaluable for problem and dispute resolution, review meetings, audit purposes and for planning any subsequent contracts.

Public authorities are obliged to comply with several pieces of legislation relating to record management practices, including the Financial Management Act (2006), Freedom of Information Act (1992) and the State Records Act (2000).

For some contracts, access to the contractor’s records may also be required to ensure that relevant government supply policies are being adhered to. This requirement is particularly relevant to facilities management and similar contracts that require the contractor to purchase products and/or services on behalf of a public authority. Request documentation must specify the requirement for the public authority to have access to such information.

For more information refer to your Department’s recordkeeping policy.

Continuous improvement

Striving for continuous improvement achieves additional benefits to those identified at the outset of the purchasing process. Where public authorities have longer-term contracts with suppliers, they should seek to provide incentives that encourage continuous improvement in performance. These would need to be considered and detailed in the initial Request brief and then incorporated in the resulting contract and relationship.

Contracts for the supply of services are particularly suited to incentive based contracting arrangements, where the benefits of innovation or improved methods (not protected by intellectual property rights) proposed by the contractor are shared between the public authority and the contractor.

In working towards continuous improvement, contract managers should monitor the external environment to identify, define and adjust to changes in stakeholder needs. The contractor should also monitor the external environment to identify process improvements, industry trends and new technologies that may be applied to the contract.

Contractual change management

Changes may become necessary during the contract period. As a contract constitutes a legal agreement between the parties, there are both legal and cost considerations to be considered when effecting changes. For this reason, a contract should contain information on how the contract can be changed.

It is important that any proposed changes are managed in accordance with formal contract change procedures as follows:

- A written record is made of any potential need for change;
- The full implications of change are considered before making any amendments to the contract or contract price;
- Those involved have the authority to negotiate changes;
• Each step of the action taken is recorded, with any changes incorporated in the contract by a formal variation to the original; and

• Customers are informed of the changes.

When seeking to vary a contract, contract managers must be mindful of whether the changes will significantly alter the original scope. In addition to considering each individual variation carefully, contract managers must be mindful of the cumulative effect of multiple variations (sometimes known as “contract creep”) and the extent to which they collectively can alter the original scope of work. Re-tendering may be required if the original scope is significantly altered.

Variations and State Supply Commission supply policy

It is important that the State is open and transparent about its expenditure on government contracts. Where an agency varies a contract (either through a single variation or a number of variations) and that variation leads to a price increase of:

• $50,000 or more (above the original contract value recorded on Tenders WA), then the variation must be recorded on Tenders WA;

• $250,000 or more (above the original contract value recorded on Tenders WA), then partially exempt agencies must submit a contract variation memo to the Department of Finance for comment; and

• $5 million or more (above the original contract value recorded on Tenders WA), then partially exempt agencies must submit a contract variation memo to the State Tender Review Committee through the Department of Finance for comment.

Finance has developed a contract variation memo that may be accessed from the Finance website at www.finance.wa.gov.au under Government Procurement > Templates and Guidelines > Goods and Services Templates, Guides and Conditions of Contract.

For more information on the State Supply Commission’s policy with respect to variations, please see the Frequently Asked Questions, available on the Department of Finance’s website.

Conflicts of interest

Contract management staff must be conscious of the need to avoid any conflict of interest in dealing with a supplier or service provider and any existing or emerging conflict of interest must be disclosed immediately and reported to the public authority’s management.

Contract management should be transparent, with the outcomes of reviews and meetings, together with any agreed actions or changes, documented. Similarly, confidential information and sensitive situations should be handled with due integrity.

Contract performance audits

The monitoring and evaluation of contract performance by contract managers is a continuous process. Potential conflicts of interest are possible because contract managers may be

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4 Unless a partially exempt agency has been accredited to a higher involvement value – then that value.
involved in the review, evaluation and management of contracts. Periodic independent audits should be conducted for high risk, high value contracts.

The most effective means of providing a framework to monitor/audit performance is to use key performance indicators (KPI’s). KPI’s must be measurable and clearly defined. The contract should specify actions that may result if there is a downward trend or fall in performance against an agreed benchmark or threshold.

It is important that KPI’s and reporting requirements are specified in the Request document. It is then the responsibility of the contract manager to proactively manage the contract and ensure that KPI’s are monitored and reporting requirements are met.

High risk contracts - liquidated damages and guarantees

Liquidated damages

Careful consideration needs to be taken before deciding to include liquidated damages and trigger events. Liquidated damages should only be included where the delivery of the product or service is critical, and the loss suffered if the delivery fails is readily quantifiable.

Liquidated damages are paid when certain contract requirements are not achieved. These requirements, called ‘trigger events’, must be clear and precise e.g. Contractor delays delivery of a new system beyond the agreed contract completion date and the Agency, as a result, will incur additional costs of maintaining their current system, maintaining the external project manager etc.

The amount payable (the liquidated damages) upon the occurrence of a trigger event must be clearly set out in the contract. The liquidated damages must be a genuine accurate pre-estimate of the loss incurred.

The purpose is usually to ensure prompt delivery or action rather than provide compensation.

Financial guarantees

Financial guarantees may be included in high risk contracts where:

- Access to immediate funds in the event of termination of the Contract due to a material breach; or

- Liquidated damages are included in the contract.

The decision to include financial guarantees should be made prior to tender, but certainly before contract award. Reference should be made to the required value of the guarantee.

There are usually costs associated with these as they are procured through the banks. Such undertakings can also affect the credit rating of the company as the banks may insist that the value of the guarantees be held in trust, thus reducing the company’s borrowing capacity.

Where liquidated damages are included in the contract, the financial guarantee gives immediate access to the liquidated damages amounts where trigger event(s) occur. The guarantee value should cover the total likely liquidated damages that may be levied prior to any contract termination.

Performance guarantees

Performance guarantees may be included in high risk contracts where performance of the contract is critical. Unlike financial guarantees, performance guarantees ensure the performance of the contract requirements only – they do not provide any money to the agency in the event of performance failure.
In the event of a performance failure, a performance guarantee ensures someone steps in to perform the contract. There are two forms of guarantee:

- Parent Company Guarantee; or
- Director Guarantee.

A performance guarantee may be included where the financial due diligence of the respondent exposes some risk to the performance of the contract, and where the services or products required are critical.

Options relating to liquidated damages and guarantees are included in the Department of Finance’s Request templates.

Client satisfaction

The extent to which the needs of clients’ or end users have been satisfied is traditionally considered as part of the review and evaluation process on the completion of a contract. However, feedback remains a valid part of the contract review process and should be provided throughout the term of the contract. Public authorities must therefore establish a mechanism for obtaining regular feedback on contractor performance.

The contract management plan

As previously outlined a contract management plan contains all of the pertinent information about how the contract is to be managed. It is a dynamic document that starts during the contract planning stage, is further developed during contract formation, and may continue to be modified throughout the period of the contract.

Finance has developed a standard contract management plan template that can be accessed from the Finance website at www.finance.wa.gov.au under Government Procurement > Templates and Guidelines > Goods and Services Templates, Guides and Conditions of Contract.

Step 3 - Extend or finalise contract

Each contract will have a defined period of operation. Public authorities have two main options as the contract expiry date approaches:

- Exercise a contract extension option where available under the contract term; or;
- Finalise the contract in accordance with the contract term.

If there is a requirement for extending or finalising a contract, it is essential that the appropriate steps be taken prior to the contract expiry date. Careful and timely planning will ensure that there is a continuity in the provision of the service where required.

Contracts due to expire should be reviewed to determine future requirements and options for those requirements to be met. This review should be undertaken in sufficient time for the public authority to call a tender if required, prior to the expiry of the existing contract.

The following matters should be addressed:

- Future requirements of the public authority or end-users;
- Comparison of actual expenditure against estimated value of the contract;
- Current contractor’s performance; and
- Developments in the marketplace.
(a) **Extend**

If the contract includes extension options then the extension should be considered, taking into account:

- Performance of the current contractor in meeting its obligations;
- Effectiveness of the contract and whether any desired improvements can be negotiated; and
- Developments in the marketplace.

(b) **Finalise**

A finalisation process should be undertaken at the end of the contract term. The process should involve review of:

- Successful completion of the contract;
- Completing arrangements for contract review – provides a guide to future purchasing, continuous improvement and accountability;
- Finalisation of the warranty commitments; and
- Reporting requirements.

**Step 4 - Review and evaluate contract**

At this stage a review should be conducted of the success of the contract in meeting its original objectives.

This contract review process should be evaluated at the completion of the contract, and prior to or concurrently with any new contract process. The outcome from this process should establish a clear understanding of future requirements and the information necessary to select the best course of action.


**Step 5 - Renew the contract**

A new contract should be tendered and awarded prior to the completion of the current contract where there is an ongoing need for the products and/or services covered by the existing contract. The commencement of the new contract should coincide with the expiry of the existing contract. This should also coincide with ongoing contract management, monitoring, and the development of the public authorities’ Forward Procurement Plan.
Appendix – Common Use Arrangements

A Common Use Arrangement (CUA) is a whole-of-government standing offer arrangement, awarded to a single supplier or a panel of suppliers for the provision of specific products or services commonly used within government. CUAs are aggregated supply arrangements that enable public authorities and other specified parties to source products and/or services.

A CUA is an efficient buying tool that streamlines the purchasing process between public authorities and suppliers. When orders are placed using a CUA, the standing offer is accepted and a binding contract commences for that particular quantity of products or services.

The majority of CUAs are mandatory and all public authorities must use these arrangements as their exclusive source of supply for the products and/or services covered by the CUA.

In keeping with the government’s commitment to the Buy Local Policy, public authorities located in country areas have the discretion to purchase products and/or services from local suppliers. As such, if a mandatory CUA features a Perth-based supplier then public authorities may choose to buy from a local or regional supplier offering value for money.

A Buyers’ Guide is developed for each CUA and all purchases made against a CUA must be made in accordance with the relevant Buyers’ Guide. A complete list of CUA Buyers’ Guides is available at www.contractswa.finance.wa.gov.au/index.html.

Unless the CUA Buyers’ Guide states otherwise, when buying from a CUA, public authorities must:

- Where the purchase is valued at $50,000 and above, publish contract details on Tenders WA;
- Where the purchase is valued at $5 million or above, submit a procurement plan, evaluation report and contract management plan to the State Tender Review Committee;
- Where any variation to the contract is valued at $50,000 or above (individually or cumulatively), publish the variation on Tenders WA;
- Where any variation to the contract is valued at $250,000 or above (individually or cumulatively), submit a contract variation memo to Finance; and
- Where any variation to the contract is valued at $5 million or above (individually or cumulatively), submit a contract variation memo to the State Tender Review Committee.


Approvals to purchase from a supplier not on a mandatory Common Use Arrangement

If a public authority not located in a country area wishes to buy outside of a mandatory CUA, or does not wish to buy in accordance with the Buying Rules of a CUA, then approval must be sought from Finance, unless the public authority wishes to procure from an Aboriginal Business or an Australian Disability Enterprise (ADE). Agencies are able to directly engage Aboriginal Businesses or ADEs, notwithstanding the existence of a mandatory CUA.

All purchases procured outside of a mandatory CUA must be recorded on a public authority’s exemption register.
Finance will consider requests not to purchase from a CUA using these principles:

- The approval will potentially weaken the effectiveness of a CUA and can make it more difficult to achieve optimal outcomes with a new arrangement when an existing CUA expires. Requests will be seen by Finance as exceptions to the rule and will not be approved lightly;

- Requests will be considered by Finance on a case-by-case basis. A public authority must be able to demonstrate that a business need cannot be adequately met by the relevant CUA. Being able to purchase an item cheaper from a non-contracted supplier would in itself not normally be considered a valid reason for an approval to be granted; and

- Some requests have been granted on the basis of compatibility issues, such as in the case of equipment purchases (e.g. specialist printers or scanners available through the CUA not being compatible with an agencies existing hardware or software) or unique operational factors.

Requests may be submitted to Finance by posted letter or email, but must be in writing and provide sufficient explanation and background to enable the request to be considered.

The requesting officer should be the Accountable Authority or delegate of the public authority/agency.

Public authorities seeking approval not to purchase from CUAAs must formally apply to the Director of Common Use Arrangements. Requests should preferably be in the form of a letter under the signature of a delegated authority from the public authority.

In order to assist Finance and the requesting public authority, and to facilitate the consideration of the request in a timely manner, public authorities are encouraged to provide the information in accordance with the headings outlined below:

- Background to the request;
- Public authority’s preferred purchasing option;
- Rationale for the request;
- Purchase value;
- Potential impact on the public authority of not proceeding with the request;
- Alternative options / strategies considered by the public authority; and
- Proposed procurement methodology for the non-CUA purchase.
Appendix – Buy Local / Free Trade Agreements

The State Government’s *Buy Local Policy* aims to maximise supply opportunities for competitive local Western Australian businesses when bidding for government contracts. The Policy supports other government initiatives to attract new investment, encourage employment creation and growth and to stimulate sustainable industry development within Western Australia.

Public authorities are required to evaluate all quotations and tenders with the intent of achieving a value for money outcome for government.


Free Trade Agreements (FTAs)

On 1 January 2005, the Commonwealth Government became a signatory to the Australia-United States Free Trade Agreement (AUSFTA). Chapter 15 of the AUSFTA contains legally binding requirements relating to procurement activities conducted by Western Australian public authorities.

Three more Free Trade Agreements have since come into force: the Australia-Chile Free Trade Agreement (ACI-FTA) on 6 March 2009, the Korea-Australia Free Trade Agreement (KAFTA) on 12 December 2014 and the Japan-Australia Economic Partnership Agreement (JAEPAL) on 15 January 2015. The ACI-FTA, KAFTA and JAEPAL all contain chapters addressing Government Procurement (chapter 15, 12 and 17 respectively) and the procurement requirements within these chapters are very similar to that of the AUSFTA. The following describes key information public authorities require to procure in accordance with the Government Procurement chapters of the FTAs.

**Governing principle**

Public authorities must not:

- Treat a locally established supplier more favourably than other suppliers on the basis of degree of foreign affiliation or ownership; or
- Seek, take into account, impose, or enforce offsets such as pre-qualification criteria, evaluation criteria or contract award not applicable to all suppliers.

**Thresholds**

The FTAs apply to:

- The procurement of products and/or services equal to or above $AU 551,000 (total contract price including the value of any options and GST); and
- Construction contracts equal to or above $AU 7,769,000 (total contract price including the value of any options and GST).
Procurement methods

Public authorities may procure via open, selective or limited tendering procedures. However:

- Selective tendering may only be used provided the public authority invites tenders from the largest number of Australian, United States, Chilean, Korean and Japanese suppliers that is consistent with the efficient operation of the procurement process; and
- Limited tendering may only be used provided the public authority does not do so in order to avoid competition, or to protect domestic suppliers, or in a manner that discriminates against United States, Chilean, Korean or Japanese suppliers.

Tender documentation

Public authorities must promptly provide, on supplier request, tender documentation and any relevant information to permit all suppliers to prepare and submit responsive tenders. This does not include information that would give a supplier or group of suppliers an advantage over competitors in the procurement.

Technical specifications

Public authorities may not prepare, adopt or apply any technical specification or prescribe any assessment of conformity that has the purpose or the effect of creating unnecessary obstacles to trade between Australia and the United States, Chile, Korea or Japan. Where this type of specification is absolutely necessary, words such as ‘or equivalent’ must be included in the specification.

Time limit for advertising tenders

Public authorities must provide potential suppliers with a minimum of 25 calendar days to prepare and lodge a submission in response to a tender request. Under the following circumstances a public authority may establish a time limit that is less than 25 calendar days but is not less than 10 working days (as required under the State Supply Commission policy Open and Effective Competition):

- Where a public authority has published details of the proposed procurement using the Early Tender Advice facility on the Tenders WA system, at least 30 calendar days and not more than 12 months in advance, and these details include a description of the procurement, the estimated timing of the approach to the market, the estimated time limit for the submission of tenders and the procedure to obtain Request documentation;
- Where the public authority procures commercial property or services;
- In the case of second or subsequent approaches to the market for procurement of a recurring nature; or
- Where a state of urgency substantiated by the public authority renders the required time limit impracticable; and

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6 Goods and services of a type that are sold or offered for sale to, and customarily purchased by, non-government buyers for non-government purposes, it includes products and services with modifications customary in the commercial marketplace as well as minor modifications not customarily available in the commercial marketplace.
In all cases, provided that the time limit is sufficiently long to enable suppliers to prepare and submit responsive tenders.

Where a public authority has not issued invitations to tender electronically, or does not make tender documentation available electronically, the 25 calendar day minimum lodgement period must be extended to 30 calendar days.

**Receipt and opening of tenders**

Public authorities must receive and open all tenders under procedures that guarantee the fairness and impartiality of the procurement process and treat tenders in confidence.

**Publication of award information**

No later than 60 calendar days after the award of a contract a public authority must publish the contract details on the Tenders WA system.

For further information on the FTAs, go to the State Supply Commission website (www.ssc.wa.gov.au) and download the State Supply Commission FTA Guidelines document.
Appendix – Types of Agreements

Contracts

A contract is the most common type of agreement used to procure products or services. A contract is appropriate where a public authority has a defined requirement – that is, the public authority knows how much of a product or service is needed and when that product or service should be delivered. That is, there is certainty of supply and demand. A supplier is obligated to provide the product or service and the public authority is obligated to buy those products or services from that supplier.

Standing Offers

Standing offers are competitively tendered agreements that are used when a public authority has an ongoing, repetitive requirement for products and/or services, but the exact volume of products or services is not known.

It is inappropriate to use a standing offer when a public authority does not have an ongoing need for a particular product or service; in other words, where a public authority is making a ‘one off’ purchase of products or services.

A standing offer contains agreed prices and the terms and conditions under which the products and services are to be delivered.

A contract is formed, under a standing offer, when the public authority submits an order to the contractor. Until that time, the public authority is not bound to buy any volume of products or services, at any time.

A standing offer may be established for use by the whole government sector. These are established by the Department of Finance and are called Common Use Arrangements (CUAs).

Where a mandatory CUA does not exist, a public authority may establish their own standing offer, for its own use.

Standing offers can achieve substantial savings and benefits to government by reducing purchasing, administration and transaction costs.

Other benefits include:

- Achieving improved quality, service and prices through aggregating spend and leveraging off this aggregated requirement;
- Reducing costs to suppliers by having to respond to fewer tenders;
- Increasing transparency in procurement though aggregating demand for low cost, high demand items that otherwise are likely to have been directly sourced in accordance with State Supply Commission’s Open and Effective Competition policy;
- Decreasing risk in procurement by establishing predetermined contract terms, conditions and performance measures; and
- Providing an opportunity for better strategic relationships with suppliers.
What types of standing offers are there?

There are two types of standing offers – a panel arrangement, and a single supplier standing offer.

A panel arrangement is a standing offer that includes a number of suppliers that all provide the same products and services. A single supplier standing offer is one in which a single supplier is to provide all of the products or services required.

Panel Arrangements

Panel arrangements are most often used when an agency has an ongoing requirement for a large volume of products and/or services and it is unlikely that one supplier can supply all of the required products and services. A choice of suppliers ensures availability of supply.

Panel arrangements may also be used where there are a large number of suppliers who are able to provide the product or service for which an agency has an ongoing need. Maintaining a panel arrangement encourages competition between the suppliers and usually results in more competitive prices.

An additional benefit is that work is shared amongst a number of panel members, thus allowing smaller businesses to participate where otherwise a single larger supplier would be chosen.

Panel arrangements are sometimes appropriate where choice of suppliers is important because a service is being delivered in an environment where conflicts of interest may occur. Where a conflict may be present, agencies are given the flexibility to easily choose other panel suppliers.

It is inappropriate to use a panel arrangement when the volume of required goods or services is not sufficient to provide adequate return to the suppliers chosen. This is true when determining whether to create a panel contract, as well as when determining the number of panellists chosen on a panel contract.

When establishing a panel arrangement it is necessary to consider such factors as:

- How many panel members should be included on the contract? In making this decision it is appropriate to conduct an assessment of how many suppliers are required on the panel. This should take into account a consideration of the value of the contract and the amount of work likely to be given to panel members;
- The rate/costs of the potential panel members should be given due consideration at the time of evaluation and prior to placement on the panel contract; and
- How the work will be allocated under the panel arrangement? For example, is it reasonable to just “pick and buy”, will the work be rotated between panellists, or will a quote be sought from each panellist etc.

It is imperative that panel arrangements contain Buying Rules, which set out the manner in which work will be allocated under the panel arrangement, how the panel members can be contacted and their rates.

Just as importantly it is vital that buyers comply with these Buying Rules. Buying Rules should be determined prior to tender release.

In general a panel arrangement, as with any contract established, should aim to achieve best value for money for the particular purchase. This includes establishing an efficient process by which to buy, while having regard to fairness between suppliers and viability of the panel as a competitive arrangement.
**Single supplier standing offer**

Single supplier standing offer is used when a public authority has an ongoing need for a good or service; where they don't know how much of the good or service they need; and a panel arrangement is not appropriate. In this situation, a single supplier will supply the public authority’s requirement.

See above, for when a panel arrangement may be appropriate.

Where there is more than one supplier supplying a public authority with their requirements under a standing offer, but each supplier provides an exclusive part of that total requirement, then this is also a single supplier standing offer – there are not two suppliers supplying the same good or service.
Appendix – Probity and Accountability

Overview

Ensuring probity and accountability in government purchasing is a key supply policy objective. Public authority employees must apply the highest levels of ethical behaviour in all areas of their work. This is particularly important in procurement, as it involves spending public money and is subject to high levels of public scrutiny.

Maintaining probity in procurement involves more than simply avoiding corrupt and dishonest conduct. It means ethical behaviour that upholds public values and ensures impartiality, accountability and transparency.

Transparency and accountability in procurement give suppliers the confidence to participate in the government marketplace, and an ethical culture minimises the cost of managing risks and enhances confidence in public administration.

Ensuring probity of action is every public authority employee’s responsibility and can be promoted through the adoption of processes, practices and behaviours that support public sector values and interests.

In addition to supply policy, probity and accountability obligations for public authorities and public sector employees are imposed through:

- Western Australian Public Sector Code of Ethics;
- *Public Sector Management Act* (1994); and

What is Probity?

“Probity” requires that a public authority conduct its procurement activities ethically, honestly and fairly. Elements of a procurement culture that promote and demonstrate high standards of probity include the following:

- Acting in a manner that is consistent with a public authority’s code of conduct;
- Possessing the skills, knowledge and experience to deliver good procurement outcomes;
- Ensuring appropriate checks and balances are in place throughout the procurement process;
- Ensuring the concept of conflict of interest is well understood and strategies are in place to identify and manage potential issues;
- Ensuring communication with suppliers is consistent and does not disadvantage or advantage one supplier over others;
- Ensuring officers are not compromised in their ability to act, or to be seen to act, impartially; and
- Ensuring confidentiality of supplier information and evaluation processes is secure.
What is Accountability?

“Accountability” requires that a public authority be able to publicly account for its decisions and take responsibility for the achievement of procurement outcomes. Elements of a procurement culture that promote and demonstrate high standards of accountability include the following:

- Responsibility for procurement decisions is readily identifiable through a clearly defined delegation matrix;
- Adequate records are maintained to enable internal and external scrutiny of procurement decisions;
- Purchasing procedures guide officers through procurement activities in-line with the relevant government and supply policies;
- Contract award details are made public as required by policy; and
- Processes are in place to provide feedback to unsuccessful bidders and to manage supplier complaints.

Promoting and Demonstrating High Standards of Probity and Accountability

Public authorities can implement a range of initiatives and mechanisms to promote and demonstrate high standards of probity and accountability in their procurement activities. These may include, but are not limited to:

- Providing awareness training for officers on general procurement procedures and specific policy training for officers involved in procurement;
- Developing and establishing a procurement culture where expectations of behaviour are consistent with the provisions of the Western Australian Public Sector Code of Ethics;
- Developing and establishing a procurement policy (and culture) that strongly advises officers not to accept gifts or benefits, as they can be, or may be seen to be, a means of influence that can compromise or appear to compromise the integrity or impartiality of a procurement activity;
- Developing, publishing and enforcing agency purchasing procedures that incorporate and promote probity and accountability;
- Clearly separating procurement functions and responsibilities to ensure officers are not responsible for an entire procurement activity (i.e. from designing Request specifications to paying invoices);
- Establishing a purchasing delegation matrix where authority to award contracts and spend funds is clearly articulated;
- Establishing a process for identifying, managing and resolving actual, perceived and potential conflicts of interest;
- Developing and utilising a tender evaluation handbook to guide evaluation panels through the evaluation process, ensure officers understand their rights, responsibilities and obligations as a panel member, and requires evaluation panel members to formally sign a declaration of confidentiality and interest;
- Ensuring interested parties have equal access to information;
- Ensuring interested parties have equal opportunity to respond;
Appendix

- Advertising and communicating upcoming contracts to a degree commensurate to contract value and relative to the nature of the potential respondents;
- Giving due consideration to each offer received;
- Objectively evaluating offers without favour or bias;
- Notifying respondents of outcomes in a timely manner;
- Utilising selection criteria that do not favour a supplier or group of suppliers;
- Establishing independent and objective evaluation panels;
- Ensuring procurement activities and decisions are open to reasonable scrutiny and can withstand a 'public defensibility' test in the context of fairness, equity and 'value for money';
- Ensuring procurement activities are consistent with employee obligations under supply policy and other government legislation;
- Responding to legitimate requests for information in a timely manner;
- Recording accurate procurement documentation throughout the procurement process (for internal and external audit);
- Adhering to established procedures except in cases with clearly justifiable and well documented reasons;
- Evaluating offers with evaluation panels consisting of more than one person (and involving experts as required);
- Appointing a probity officer to provide advice on the integrity of the proposed process for large, complex or controversial procurement activities;
- Regularly and systematically monitoring supplier performance to ensure contract requirements are satisfied and issues of poor performance are documented and addressed;
- Defining document management and control procedures (physical and electronic) to protect and limit access to confidential information;
- Establishing and implementing clearly defined procedures for electronic security including information storage and communication processes; and
- Maintaining an independent and responsive complaints system.

Probity Advisers and Probity Auditors

What is the difference between a probity adviser and probity auditor?

A probity adviser works closely with those conducting the procurement process from the beginning, providing advice on probity/process issues that may arise, and providing advice on strategies to overcome potential problems. A probity adviser’s role is proactive and strategic in nature. A probity adviser is closely involved in the procurement process and cannot be regarded as an ‘independent’ party.

A probity auditor’s role is more generally an ‘after the event’ role, auditing the process after completion or at key stages during the process. The process and associated documentation are audited and any probity issues are identified. These may then be addressed in a probity audit report. A probity auditor must be completely independent, and therefore cannot be the legal adviser or other person already involved in the project.
The role of Finance in procurement activities

Finance is required to be involved in most public authorities’ procurement activity when the procurement is valued at $250,000 or above. In this way, Finance is an independent third party involved in the process and is able to provide you with guidance on matters of probity and accountability. There is a great deal of overlap between the role performed by probity service providers and Department of Finance Government Procurement staff.
Appendix – Foreign Exchange Risk Management

When public authorities purchase products and/or services directly from overseas, or purchase high value products and/or services domestically with a large imported content, the potential impact of foreign exchange risk should be considered.

The following guide provides an overview of how to identify foreign exchange risk within the procurement and when to consider a change to standard Request template pricing. Should foreign exchange risk be assessed as significant or high during the procurement planning phase, it may be necessary to ask for greater pricing detail in the Request.

It is important that should foreign exchange risk be deemed significant or high, or you are uncertain of the approach to take, that you contact Western Australian Treasury Corporation (WATC) at www.watc.wa.gov.au or on (08) 9235 9100 to assist with your procurement planning.

What is foreign exchange risk?

Foreign exchange risk is the risk of a transaction’s value changing due to movements in exchange rates.

In the case of a public authority procuring products and/or services, exposure to foreign exchange risk means that the Australian dollar (AUD) cost of your purchase is at risk of changing due to the impact of changes in an underlying exchange rate.

Why does purchasing products and/or services from overseas create foreign exchange risk?

When purchasing from overseas, a public authority is, in fact, purchasing two things – the product and/or service itself and the foreign currency necessary to pay for the products and/or service. Whilst the purchase of the product and/or service is visible, quite often the purchase of the foreign currency is not.

Remember that when a product and/or service originates from overseas, its cost-base will be denominated in another currency. If payment is made in AUD, at some point, this payment will need to be translated back into the original cost-base currency.

A supplier based overseas will most likely prefer to receive payment in their local currency. If they are paid in a foreign currency (i.e., Australian dollars), they will be exposed to exchange rate movements and cannot guarantee whether they will ultimately receive a fair price for their products and/or services. Similarly, a public authority may prefer to pay in AUD because it will have certainty over how much its purchase is going to cost and will not need to be concerned with movements in exchange rates and risk exceeding their budget.

The party who pays/receives payment in their domestic currency has transferred the foreign exchange risk to the other party.

Standard procurement templates request pricing in AUD as a default method of transferring foreign exchange risk to the supplier. However, as the value of exposure to foreign exchange risk increases, it is necessary to examine whether the State is receiving fair value for transferring the risk to the supplier as opposed to the public authority holding the risk and managing it through WATC.
When can exposure to foreign exchange risk occur?

There are several ways in which exposure to foreign exchange risk can occur when purchasing products and/or services. While the list below should not be taken as exhaustive, considering these scenarios should identify the most likely occurrences.

- Payment for products and/or services denominated in a foreign currency.
- Payment for products and/or services denominated in AUD but where the amount of AUD is conditional upon an exchange rate.
- Payment for products and/or services denominated in AUD but where the amount of AUD is conditional upon a price variation clause linked to an exchange rate.
- During a period of negotiation prior to agreeing a fixed AUD price where the AUD price is dependent on an exchange rate.

Preliminary foreign exchange risk assessment

It is preferable that the potential for foreign exchange risk is identified early in the procurement process. If material, purchases with significant or high foreign exchange risk may require a tailored approach to ensure that pricing information requested from respondents is suitable to make a fully informed value for money assessment.

During the procurement planning phase, you should consider the following:

- Identify whether the products and/or services are originating from overseas.
- Is the supplier sourcing directly from overseas, or through several intermediaries? Suppliers who are sourcing directly from overseas are more exposed to foreign exchange risk and are more likely to pass this risk onto the public authority.
- Has market sounding identified terms of payment indicative of foreign exchange risk existing? For example, price variation clauses or indicative pricing subject to exchange rates.
- Complete the foreign exchange risk matrix to determine whether the exposure to foreign exchange risk is material.
- Should the exposure to foreign exchange risk be deemed significant or high, or you are uncertain of the approach to take, contact WATC at www.watc.wa.gov.au or on (08) 9235 9100.

Foreign exchange risk matrix

Although many products (and some services) originate from overseas, moving to a tailored procurement approach is only warranted where the foreign exchange risk to the transactions value is deemed material. To assist you with your preliminary risk assessment, the risk matrix below has been designed to categorise purchases into a foreign exchange risk rating of low, moderate, significant or high.

- If your assessment of the foreign exchange risk within your purchase is low, document this within your risk assessment and continue to use standard procurement template Request pricing in AUD.
If your assessment of the foreign exchange risk within your purchase is moderate, document this within your risk assessment and continue to use standard procurement template Request pricing in AUD. Consider the term of the contract as this will increase the exposure to foreign exchange risk. If payment is due to occur later than one year following date of contract, this risk should be escalated to significant. Consider also, the size of the exposure relative to the public authority’s budget.

If your assessment of the foreign exchange risk within your purchase is significant or high, or you are uncertain of the approach to take, contact WATC at www.watc.wa.gov.au or on (08) 9235 9100.

**Figure 1 Foreign exchange risk table**

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FX Risk Rating: low moderate significant high

* All values in AUD

Note if your purchase (regardless of value) will require payment in a foreign currency contact WATC at www.watc.wa.gov.au or on (08) 9235 9100.

**When foreign exchange risk is material**

Material exposure to foreign exchange risk will require greater pricing detail from respondents to ensure that the price paid by the public authority to transfer this risk to the supplier is fair. Where warranted, the public authority may consider allowing suppliers to quote in AUD and their preferred currency (dual pricing). WATC can advise on the necessary changes to Schedule 3 – Pricing, within the standard Request template.

To achieve price certainty the public authority may need to implement a foreign exchange hedge (protection) with WATC. Access to foreign exchange products through WATC will require a Master Agreement to be established with the public authority if not existing prior. Protection of the public authority’s budget should be undertaken as soon as is practicable on advice from WATC.

WATC can assist agencies to determine the appropriate approach and can provide support in developing a Request suited to the individual procurement situation and the ensuing financial evaluation process.
Government approach to foreign exchange risk management

Further guidance on managing foreign exchange risk can be found within Treasurer’s Instruction 826. Treasurer’s Instructions can be found within the Financial Administration Bookcase at www.treasury.wa.gov.au/FAB/.

Treasurer’s Instruction 826 requires "The Accountable Officer or Authority shall ensure that foreign exchange risk ...is identified, measured, considered and managed." The Instruction further requires that "...where a material foreign exchange exposure has been identified, the Accountable Officer or Authority shall seek and obtain advice from the Western Australian Treasury Corporation in the management of that exposure.".

Consideration of Commodity Risk

Commodity risk is the risk of a transaction’s value changing due to movements in underlying commodity prices. Some examples of commodities include electricity, diesel, oil, and steel.

Commodities are often priced in a currency other than AUD. If you believe that the exposure to Commodity risk within your purchase is significant or high, or you are uncertain of the approach to take, contact WATC at www.watc.wa.gov.au or on (08) 9235 9100.
Appendix – Disposals

Each year, the State Government spends more than $9 billion on products, services and works to assist in the effective delivery of services to the community. A significant proportion of this expenditure is made on products, many of which need to be disposed of when they become surplus to requirements. The expectation is therefore that a public authority disposes of these products in a manner that is ethical, equitable and efficient, and where practical maximises the public benefit or financial return to government.

In order to achieve this goal and maximise the financial return to government, public authorities should:

- Achieve the best available net return when selling products;
- Appropriately handle products that require special consideration in their disposal; and
- Ensure that all disposal dealings are undertaken in an even-handed, open and honest manner.

Although open and effective competition should be sought where practical when disposing of products, the effort involved in achieving this should be commensurate with the value of the products.

There are a number of reasons why it is appropriate to dispose of surplus products. It could be because they:

- Are considered obsolete due to changes to procedures, functions or usage patterns;
- No longer comply with occupational health and safety standards;
- Occupy storage space and are not expected to be used in the foreseeable future;
- Are reaching their optimum selling time to maximise returns; or
- Are beyond repair but can be sold for scrap.

Undertake valuation

Valuation can play an important part in the effective and efficient disposal of products as it provides an important reference point to help officers select the most appropriate disposal option.

The most accurate determination of value is always what the competitive market is prepared to pay. In addition to this, there are a number of agents who provide public authorities with expert valuations to ensure that the seller’s expectations from sales are realistic. However, public authorities should only engage the services of an agent if the products are of sufficient value.

It is important to be aware that valuers may apportion a value on a product that is based on their replacement cost (for insurance purposes) and that this value will often be considerably more than what will eventually be realised at sale. Alternatively, valuers can claim that products have ‘nil’ book value after depreciation when in fact they could obtain a considerable sum at sale. It is therefore recommended that public authorities identify an appropriate type of valuation and instruct the valuers accordingly.
Identify disposal options

The primary aim of disposing of surplus products is to achieve the best net return or outcome for the government. It is therefore important that public authorities consider all disposal options before deciding which is the most appropriate. The disposal methods listed in the SSC policy are not exhaustive and public authorities may nominate other methods more appropriate for the particular disposal.


Evaluate disposal options

When selecting the most appropriate method of disposal, public authorities should carefully evaluate each option. This can be achieved by identifying the costs and benefits of each option and linking them to the particular requirements of the disposal.

Factors to consider include:

- The type and condition of the surplus products;
- Whether there have been any offers from other public authorities;
- The nature of the recipient market;
- Time and resource issues; and
- The costs and benefits provided by each disposal option

Accountability

The disposal of surplus products is an activity that should be accountable and transparent. For this reason, a public authority may be asked to justify decisions it has taken. Public authorities should therefore exercise sound judgement in making disposal decisions to ensure:

- That methods employed are appropriate; and
- The result is in the best interests of the taxpayer.

Liability issues regarding disposal of products

A public authority should not offer any warranty as to the quality or condition of products offered for disposal.

Documentation relating to the products that a public authority is offering for disposal should contain a disclaimer and exclusion of warranty, which establishes that:

- The public authority offers no warranty on the condition of products for sale;
- All products are generally sold ‘ex works’ or ‘as is, where is’; and
- The public authority will not admit any claims for rebates resulting from any error in description, quantity or quality.

A public authority should consider seeking legal advice regarding the drafting of any disclaimer relating to the disposal of products of sufficient value.
Disposal of electronic equipment

Public authorities should consider information security issues when disposing of electronic equipment, such as faxes, copiers, printers and personal computers. Recent investigations found that the electronic equipment disposed of by some public authorities still contained sensitive and confidential information. Public authorities should ensure that all sensitive information is deleted from their electronic equipment prior to disposal.

Sale of products to public sector employees

Although it is not openly encouraged, circumstances may arise where a public authority considers an internal disposal to be the most appropriate disposal method. This method is in accordance with the policy where the products are valued at less than $1,000.

When undertaking internal disposals, a public authority needs to be aware of the sensitivities that surround the selling of products to employees. If this disposal option is to be adopted, it is recommended that consideration be given to the following issues:

- Internal disposals may draw criticism from the general community and should therefore be used sparingly. Perception is important and a public authority must, if required, be able to justify why the particular method was chosen.
- Packaging of products is important.
- It should not be used as a means to remain under the $1,000 threshold and therefore avoid a public disposal process.
- If products are packaged in large quantities, they may be targeted by employees for the purpose of resale. Some consideration should therefore be given to limiting the number of items an individual employee can purchase.
- Appropriate procedures ensure fairness and probity of the internal disposal process. This includes:
  - Implementing a bidding process from the local work area.
  - Nominating a closing date and time for bids.
  - Ensuring sealed bids are placed in a tender box.
  - Producing a written evaluation report.

Officers involved in the internal disposal process must not be permitted to bid for the products.

Destruction and dumping

A public authority may only destroy or dump products where the products:

- Cannot be refurbished or reused;
- Have no resale value;
- Are non-recyclable; or
- Cannot be disposed of in any other way, due to a law, government policy, public safety, or because they are of a hazardous or pollutant nature.
Appendix – Exemptions and Approvals – the Open and Effective Competition policy

The SSC’s Open and Effective Competition policy allows public authorities to exempt themselves from the minimum competitive requirements of the policy. In addition, the policy allows public authorities to depart from other policy requirements. That is, under certain limited circumstances public authorities may:

- Directly engage a supplier without seeking competitive quotes, or without going to public tender;
- Directly engage an Aboriginal Business or an Australian Disability Enterprise;
- Approve the naming of a proprietary product;
- Approve a contract period greater than five years;
- Approve an advertising period less than ten days; and
- Where to do so represents operational risk, choose not to publish contract award details on Tenders WA.

Public authorities are required to maintain a register that records all instances where an exemption or approval has been granted by the Accountable Authority.

Some exemptions or approvals may not be available under the Free Trade Agreements obligations and reference should be made to the Free Trade Agreements before proceeding with covered procurements.

Exemptions from Minimum Competitive Requirements

Under the SSC Open and Effective Competition policy a public authority is not required to comply with the minimum competitive requirements for a procurement where the Accountable Authority considers that circumstances exist which support the minimum requirements not applying, or an emergency situation arises and justification for that decision is documented.

Public Authorities may therefore directly engage a supplier without seeking competitive quotes, or without going to public tender where:

- There is a bona fide sole source of supply.
- A public authority has awarded a contract for a similar requirement through a competitive process within the previous 12 months and there is a reasonable expectation that the market has not changed.
- A public authority requires the use of products and services from a particular supplier that must be integrated within an existing contractual arrangement, project or ICT standard operating environment and an alternative product is not suitable.
- There is an opportunity to procure from a registered Aboriginal Business and the value of the purchase does not exceed $250,000. However, an Accountable Authority may approve a public authority undertaking a procurement in excess of $250,000 from a registered Aboriginal Business, if it considers that circumstances exist to support the procurement being undertaken. A complete list of registered Aboriginal Businesses may be found at http://www.abdwa.com.au/.
Appendix

- A public authority has an opportunity to purchase from a registered Australian Disability Enterprise. Australian Disability Enterprises (ADEs) are commercial businesses that employ people with disability. A complete list of approved ADEs is available from the Australian Disability Enterprises website http://www.ade.org.au/.

- There is an emergency situation.

**What are the key supply policy requirements when relying on exemption or an approval?**

Public authorities who choose to rely on an exemption or an approval must ensure that:

(i) The Accountable Authority approves the exemption or approval in writing;

(ii) Justification for the exemption or approval is documented on file;

(iii) The exemption or approval is recorded on the public authority’s exemption register; and

(iv) The procurement represents value for money.

Where the estimated total value of the proposed procurement exceeds the covered procurement threshold under the Free Trade Agreements, the grounds for an exemption or approval, above, may not be applicable.

A partially exempt public authority must obtain advice, in accordance with their partial exemption, from Finance Government Procurement, prior to proceeding with an exemption or approval, particularly where the estimated price exceeds the covered procurement threshold, except where a partially exempt agency is buying from a registered Aboriginal business or an Australian Disability Enterprise.

Finance has developed an exemption and approval template that can be accessed from the Finance website at www.finance.wa.gov.au under Government Procurement > Templates and Guidelines > Goods and Services Templates, Guides and Conditions of Contract.
Appendix – Ensuring Effective Competition in a Changing Market

Effective competition helps ensure that procurement processes deliver value for money outcomes. During a procurement process it may become apparent that effective competition is lacking in the market, or an event may occur which significantly reduces competition. For example, your procurement planning had revealed a number of viable suppliers and only one submits a tender, or you have sought clarifications from a number of Respondents and all except one withdraw.

Does the Competition Allow for a Value for Money Outcome?

In instances of reduced competition, consideration should be given as to whether the achievement of a value for money outcome is possible. Considerations should include whether:

- The procurement planning research was accurate and suitably comprehensive for the complexity and risk of the project;
- The scoping and specifications are correct and free from defect;
- There is sufficient competition still present in the process; and
- It can reasonably be expected that a value for money outcome is still achievable in the circumstances.

What Options are Available?

If effective competition is impaired then a public authority should consider what options are available, they may include:

- Continuing with the procurement;
- Remedying the defect (where contractually possible within the procurement process and fair to do so. Legal advice should be sought prior to using this option);
- Terminating the procurement and starting a revised procurement process (where contractually possible within the procurement process and fair to do so. Legal advice should be sought prior to using this option); or
- Terminating the procurement and revisiting the business need.

In weighing the options all relevant factors should be considered, including the:

- Extent to which competition is impaired;
- Significance of the expenditure;
- Impact on project timelines;
- Risk to government and the general public; and
- Ensuring compliance with all other State Supply Commission and government policies.

Documenting the Decision

A public authority’s decision must be reasonable and made on justifiable grounds. Irrespective of which option the public authority chooses, the public authority’s decision should be documented at the time the decision is made. This enhances probity and assists in mitigating any perception of bias.
Appendix – Market Sounding Guidelines

What is market sounding?

Market sounding or industry engagement describes a range of activities through which an agency consults with industry regarding an upcoming procurement. Early engagement with industry provides valuable information to make the subsequent procurement process more focussed and efficient and ultimately deliver improved contract outcomes.

Market sounding is a valuable research tool for a broad spectrum of procurement processes. It gives agencies the opportunity to challenge their assumptions of a particular industry, clarify industry capabilities and determine the most appropriate procurement strategy.

The focus is on suppliers within a particular industry as a whole rather than the merits of individual suppliers. It includes no element of supplier selection or the evaluation of offers and involves no commitment from industry or the agency.

Market sounding is beneficial because it:

- Allows access to rich sources of data and information from industry on the way a particular market operates, the types of services and products available, industry pricing structures and any future changes to the industry;
- Enables the development of Request documentation relevant to the targeted industry and easy to understand and complete, reducing the need for addenda or post-tender clarifications;
- Provides an opportunity for industry to be informed about government procurement processes, which is particularly relevant in sectors where suppliers may lack experience in completing government tenders; and
- Facilitates the consideration of innovative solutions that which had not previously been identified or considered.

Probity and Accountability

Public authority employees are expected to undertake market sounding in a manner consistent with transparency, probity and accountability policies and expectations (please refer to the Probity and Accountability appendix for more information on these obligations including State Supply Commission (SSC) policies).

In order to best ensure that probity and accountability obligations are upheld, the process used to gather information from industry and the information collected should be documented. This also enables the information to be used by the public authority in the future.

Whatever method is chosen to undertake market sounding, it is critical that there is no element of bid selection, evaluation, actual or perceived conflict of interest, commitment or undertaking towards any potential supplier. Where information is provided by a supplier and an agency wishes to use that information, careful consideration must be given to potentially confidential information, or use of the supplier’s intellectual property.

It is important to note that the obligations of probity and accountability should in no way stop an agency from undertaking market sounding for a new procurement requirement. Rather, market sounding affords agencies an opportunity to demonstrate to industry that it is undertaking due diligence and consultation before presenting a Request to the market.
Planning Market Sounding

Proper planning is necessary if market sounding is to result in the desired outcome. Poorly planned market sounding can result in inadequate outcomes for both the agency and industry, as well as unjustified costs in terms of time spent and resources allocated to the engagement. Furthermore, an agency could suffer from reputational damage if industry feels that the market sounding process was poorly facilitated.

As no two types of procurement are identical, there is no ‘one size fits all’ approach to planning a market sounding process. It is important to understand what information is required from industry, and what questions need to be raised, before initiating contact. This will help ensure that the agency drives the direction of the engagement. If industry sets the parameters of the discussion, there is a risk that the information attained is akin to a ‘sales pitch’, which may not be beneficial in terms of broadening the knowledge of industry and clarifying requirements.

When planning market sounding consider the following points:

- What is the nature of the requirement? How narrowly can the requirement be defined in terms of the product/services sought, the nature of the industry, and its distinct features?
- Who are the main users or clients of the products and/or services sought, and what outcomes are they seeking through the consumption of the products/services?
- How has the requirement been serviced historically? Why has the existing approach to procuring the goods/services been taken, and have alternative approaches been considered in the past? If procurement practice in this area has changed, why? How has previous Request documentation been designed, and why?
- Who forms the known supplier base? Does any supplier have unique offerings? Are you confident that you have identified as many suppliers as possible?
- What are the main risks associated with the procurement of the requirement? How have these risks been mitigated in the past, and were these methods successful? Have recent changes in the industry created new risks to consider?
- Has any noteworthy trend in industry become apparent lately? If so, what are these trends and what is the expected impact on the procurement of the services? Will these trends have a positive or negative impact on the agency’s business? Furthermore, is it believed that opportunities for innovation exist in the procurement of the requirement?

Best Practise in Market Sounding

While there is no one failsafe means of engaging industry for the purposes of market sounding, there are a number of approaches and principles which, if adhered to, are likely to assist in achieving a positive outcome.

- It is generally good practise to engage with the supplier base as early as possible. Before consultation with the known supplier base commences, research should be undertaken to establish whether any new providers have emerged since any previous procurements or market research were undertaken. Consulting with the broadest range of suppliers possible helps ensure that a range of different perspectives are considered before Request documentation is prepared.
Whilst one of the key benefits of market sounding is that it provides an opportunity to learn more about the procurement requirements, it is important to be as informed as possible about the market before commencing the engagement. This will make it possible for the agency to determine what they do and don’t know, and the subsequent market sounding can be used to fill in the knowledge gaps.

When planning market sounding, it is important to focus on the desired outcome of the procurement; which does not have to be achieved through the use of a particular type of product or service. It is acceptable to solicit information on new solutions. Marketplaces can change significantly during the lifespan of a purchasing contract, and as such it is important that you avail yourself of market developments as much as possible.

Supplier expectations with regards to the market sounding should be managed at the outset of market sounding. Agencies should define what is required from the engagement process, and ensure they lead conversations with suppliers. Suppliers should be informed about the procurement process and agency obligations regarding open and effective competition in procurement.

Meeting with supplier representatives in person is the most straightforward, and often the most successful method of engaging with industry. Individual meetings with suppliers often lead to more useful information being elicited than group briefings, as representatives are likely to be reluctant to share information when competitors are present.

The nature of communication with the supplier base should be as uniform as possible. Agencies should ensure that all identified suppliers are given the same level of access to procurement staff and the same level of opportunity to contribute to the engagement process.

Any commercial in confidence information shared by suppliers through market sounding must remain confidential, and not shared beyond those for whom it was intended.

It is acceptable to discuss previous procurements for the same products/services or in the same market space. This will assist suppliers in providing relevant information and insights. However, be mindful of not disclosing commercial-in-confidence information, or getting side-tracked into a discussion on past contracts, rather than future requirements.

Be wary of over-reliance on the information provided by companies when designing Request documents. Utilising outcome-based specifications instead of specific technical requirements can help mitigate the risk of advantaging one particular supplier.

Be mindful of both the value and risk level associated with the kind of procurement being undertaken. More complex and expensive procurement processes are likely to require a more structured and rigorous approach to market sounding.

Market sounding does not have to be limited to specific suppliers in the industry that is being targeted. Industry representative groups may also have relevant information, and a different perspective to individual suppliers. Also, it is worth consulting with other procurement agencies that may have recently approached the market with a similar request. This includes procurement agencies located interstate and overseas.

Sound recordkeeping is vital to document that an agency’s probity and accountability obligations have been adhered to. Records of market sounding should include who the agency has engaged with, the reason for the engagement, and any actions resulting from the engagement.
Risk Management in Market Sounding

One of the main obstacles to the implementation of effective market sounding during the planning of procurement processes is the perception that it contravenes SSC policy, and as such is inappropriate conduct. This perception is not accurate. Rather, in some circumstances, failure to undertake market sounding poses a far greater risk to agencies in the procurement process. Risks associated with a lack of market sounding include poorly-designed specifications, unsuitable conditions of contract, a lack of tender responses, and inferior Value-for-Money outcomes.

The market sounding process itself carries little risk to agencies if particular principles are followed:

- **Uniformity.** While no two suppliers are alike, engagement with all suppliers consulted should be as uniform and consistent as possible.

- **Security.** If information is provided by a supplier it should not be shared with other suppliers (directly or inadvertently), or people outside of the agency unless permission from the supplier is attained. Any documentation provided by suppliers should be stored securely.

- **Boundaries.** Agency staff should be open with suppliers about what can and cannot be discussed. The purpose of the market sounding must be clearly communicated to suppliers before it begins to avoid any misunderstanding.

When should Market Sounding end?

For the purposes of these guidelines market sounding is considered to be a planning activity. Therefore, market sounding should cease when the agency is prepared to advertise their Request or has determined that the procurement process will not proceed. Communications to suppliers about the end of the market sounding period should be made at the same time, to ensure that no supplier is unfairly advantaged.

It is important to note that ending the market sounding period should not inhibit standard 'business as usual' with existing suppliers. However once the procurement becomes a competitive process, any discussion that could potentially advantage (whether real or perceived) one Respondent over another should not occur.

Examples of effective Market Sounding

As previously stated, there is no one way to conduct market sounding. Depending on factors such as the make-up of the particular industry, complexity of the requirement and the value/risk proposition of the procurement, effective market sounding could be accomplished through a range of approaches including:

- Telephone calls
- Meetings
- Workshops
- Product demonstrations
- Publicly advertising an Expression of Interest
- Issuing a Draft Request for Comment
The following case studies have been chosen to illustrate good practise in this area.

Case Study – Pharmaceuticals

The project

With previous pharmaceutical contracts, there were significant difficulties in encouraging suppliers of patented pharmaceuticals to submit an Offer. This created a significant risk to WA government agencies (primarily WA Health, as the largest purchaser of pharmaceuticals), as it resulted in a substantial portion of the requirement for pharmaceuticals being purchased outside of a formal contract, which meant that the purchases were not protected by government terms and conditions.

Market sounding approach

Planning meetings were held with potential respondents. These discussions revealed that suppliers saw no benefit to tendering for patented items, and that they did not wish to be ‘locked into’ a contract. From these discussions, it was determined that suppliers’ concerns primarily related to the preference of using their own terms and conditions rather than adhering to the State Government Request Conditions and General Conditions of Contract (GCoC). Additionally, suppliers were concerned with the lack of flexibility in using a contract price fixed state-wide.

The results

As a result of this consultation, the supply of pharmaceutical products was categorised into “patented” and “non-patented” groups to better reflect market conditions and the requirement for different pricing structures. The ‘patented products’ category was designed with greater flexibility and opportunity for suppliers to negotiate terms and conditions that are suitable for the supply of patented products. In addition hospital sites can enter into Site Level Orders (SLOs) to negotiate directly with suppliers for reduced pricing based on expected usage at the site.

In the lead up to issuing a Request, all dialogue with industry emphasised the objectives of WA Health and non-Health agencies for the proposed arrangement. That is, greater compliance with State Supply Commission policy and a requirement for greater coverage of pharmaceutical products under a state-wide arrangement.

This outcome has resulted in a significant increase in the amount of patented items being offered through the new Request. Upon contract award, this will lead to a broad coverage of patented items under a contractual framework for the supply of patented items, and greater surety regarding the terms and conditions under which these items are supplied both to WA Health, and other WA government consumers of pharmaceutical products.
Case Study – Orthopaedic Trauma Prostheses

The project

Orthopaedic trauma prostheses are the products used to treat musculoskeletal injuries such as bone fractures. Prior to the establishment of this contract, the vast majority of these products had not been captured under a contractual framework and this presented a significant financial and contractual risk to WA Health.

Market sounding approach

Market sounding in this process took the form of meetings between procurement officers at the Department of Finance and WA Health, and identified suppliers of trauma prostheses. The objectives of these meetings were clearly outlined to industry representatives by the procurement officers at the commencement of the meetings. Market sounding was undertaken with both large multi-national suppliers who could service the entire requirement, and smaller companies that specialised in smaller market sectors.

Meetings with suppliers identified that there had been significant shifts in clinical preferences over the preceding five years, meaning that implant types that had not been popular were now back in favour. Finance and WA Health procurement officers were therefore able to understand how industry categorised the products in this field, and were able to ascertain views by suppliers on a number of different procurement scenarios, including those implemented in interstate jurisdictions.

The results

One key understanding taken away from the consultation was that the most accurate pricing could be provided through ‘constructs’ which represented the total purchasing requirement for a particular type of trauma surgery. As such, Respondents were asked to provide both individual product pricing, and pricing against several ‘baskets of goods’ which represented a diverse range of common trauma surgeries. The Request documentation also provided for the possibility of partial award scenarios; to offer smaller suppliers an opportunity to make competitive submissions for a sub-section of the market.

The market sounding also clarified the contract management challenges that would be faced once the contract was established - due to the variety and diversity of surgeries catered for by trauma products, it became clear that no contract would be able to provide for 100% of WA Health’s requirement. Therefore, the contract provided for up to 20% of the volume of WA Health's trauma purchases to be purchased off-contract, to allow for product trials and special requirements not satisfied by the contracted suppliers. In order to effectively manage the challenges presented by monitoring this expenditure, Finance and WA Health developed an approval form for off-contract expenditure which documented the reason for the purchase, the cost, and written assurance that the purchase requirement could not be satisfied by a contracted supplier.

By identifying these challenges at the outset, WA Health was also able to put into place an effective contract management strategy, to ensure a smooth transition to the contract. These strategies were documented in a comprehensive contract management plan, which is the regularly referred to and updated by contract management staff at WA Health.
Case Study – Human Resource Management Information System (HRMIS) - Multi-Agency aggregated buy

The project

An HRMIS is computer software used/designed to improve the efficiency of HR management processes, and improve outcomes through the automation of basic HR tasks and activities. Due to the fact that a number of agencies had not tendered for this type of system for a number of years, and the fact that most agencies were only familiar with the product of the current provider, an early decision was made to undertake a detailed market sounding process.

Market sounding approach

In order for the agencies participating in the procurement to gain a better understanding of what the market could provide, potential respondents were invited to participate in product demonstrations, which would showcase the capabilities of their system to agency representatives. To ensure probity and to structure the process, potential respondents were provided with an agenda to adhere to, and a time limit. All participants were briefed beforehand on the demonstrations to ensure obligations of all parties were clearly defined.

The results

As a result of this exercise, the participating agencies were able to better define their specifications in line with the offerings available in the marketplace. Furthermore, by improving their knowledge of the marketplace, the agencies determined that they were more likely to attain suitable responses through outcome-based specifications, rather than solely providing specific technical requirements for Respondents to comply with.

Discussions with potential Respondents also clarified that the base cost of the HRMIS would be less expensive according to the number of employees in the agency. This assisted the agencies in determining that significant savings through aggregation could be made. Potential respondents were made aware that aggregation was a possibility the agencies were exploring, which allowed the suppliers time to consider their pricing under an aggregated arrangement once the Request was advertised.
Case Study – Radio Communications for Perth Arena

The project

VenuesWest wished to procure a radio communications system, which would be fit for purpose in the yet to be completed Perth Arena. As this was a relatively unique requirement (the system was required to operate within unalterable architecture), it was important that the Request was correctly specified to prevent errors once Perth Arena became operational.

Market sounding approach

In order to ensure that the agency’s understanding of the nature of this requirement was realistic and in line with the capabilities of industry, a draft Request was issued for comment through Tenders WA. This gave industry an opportunity to provide comments and feedback on the proposed specifications, qualitative requirements and appropriate methods to test the communications equipment during any product trialling which may occur. This process also gave the agency an opportunity to ensure that its specifications were suitably generic, which was hoped would elicit a competitive amount of offers. This also ensured that a single supplier’s products were not given preference, which would then satisfy probity concerns. This strategy was augmented by an industry briefing, which allowed for further collaboration with industry to determine the nature of the requirement.

The results

As a result of this consultation, the specifications were modified based on current industry practise, solutions and standards. The need for an emphasis on the importance of case studies and referee reports in the Request documentation was also identified, so that Respondents could clearly demonstrate their experience in dealing with radio transmission issues in a heavily concreted complex. This approach greatly assisted with the short-listing process and identifying trialling solutions which were more likely to work and provide a fair demonstration of the capabilities of any one proposed solution.
Appendix – Sustainable Procurement

Introduction

This appendix provides information and practical advice to Western Australian public authorities and government procurement officers on how to integrate sustainability considerations into the procurement process.

The information and advice builds on work undertaken by members of the Australian Procurement and Construction Council’s (APCC) Sustainable Procurement Working Group, in particular, procurement guidance material produced by the Queensland Government Chief Procurement Office.

Sustainability considerations should be incorporated into every stage of the procurement process, including at the forward procurement planning and budget allocation stages. However, the extent to which sustainability considerations should be applied to a particular procurement will vary depending on a range of factors, including the procurement’s value and significance, the severity of associated sustainability impacts, the maturity of the market and regulatory requirements.

Western Australia’s Sustainable Procurement Policy

Sustainable procurement can minimise a public authority’s environmental impact as well as benefit society and the natural environment and reduce overall operational costs.

The State Supply Commission’s Sustainable Procurement policy requires public authorities to consider sustainability during the procurement process, including:

- preparing procurement plans;
- preparing Request design, including selection criteria;
- preparing Request specifications that reflect environmental and social standards, codes or legislation;
- determining methods of verification of a preferred bidder’s claims made regarding sustainability;
- writing evaluation reports; and
- as a measure of a supplier’s contract performance against agreed commitments.

Australian and New Zealand Government Framework for Sustainable Procurement

The APCC has developed the Australian and New Zealand Government Framework for Sustainable Procurement (Framework) as a set of national and trans-Tasman principles to guide Australian State, Territory and Federal governments and the New Zealand Government in implementing sustainable procurement. The Western Australian Government is a signatory to the Framework and its application.

The Framework and a number of associated documents are available at www.apcc.gov.au under Procurement > Procurement Publications.
What is Sustainable Procurement?

Sustainable procurement involves an organisation meeting a need for products and services in a way that achieves value for money and generates benefits not only to the organisation, but also to society and the economy, while minimising damage to the environment.

The APCC Framework defines sustainable procurement as “… a process whereby organisations meet their needs for products, services, works and utilities in a way that achieves value for money on a whole of life basis in terms of generating benefits not only for the organisation, but also to society and the economy, whilst minimising damage to the environment.” This definition was developed by the United Kingdom Government commissioned Sustainable Procurement Taskforce in 2006.

Key Sustainable Procurement Principles

At a high level, the APCC Framework is built around four broad principles of sustainable procurement. The Framework recommends that these principles should underpin the development and implementation of sustainable procurement strategies, policies, guidelines and tools.

Accordingly, the information and advice in this appendix endeavours to reflect the following four key principles:

- adopt strategies to avoid unnecessary consumption and manage demand;
- in the context of whole of life value for money, select products and services which have lower environmental impacts across their life cycle compared with competing products and services;
- foster a viable Australia and New Zealand market for sustainable products and services by supporting businesses and industry groups that demonstrate innovation in sustainability; and
- support suppliers to government who are socially responsible and adopt ethical practices.

Sustainable procurement dimensions

Sustainable procurement comprises three dimensions: social, environmental and economic sustainability and aims to reduce the adverse environmental, social and economic impacts of purchased products and services throughout their life. Examples of environmental, social and economic impacts are:

- inputs of natural resources, energy and water in the manufacture, use and disposal of products;
- pollution produced from the manufacture, use and disposal of products;
- costs of operation and maintenance over the life of the products;
- labour conditions in the manufacture, use and disposal of products or delivery of services; and
- loss of flora and fauna resulting from the removal or alteration of natural resources.

Sustainable procurement looks beyond the up-front cost to make purchasing decisions based on the entire life cycle of the products and services, taking into account associated costs, environmental and social risks and benefits, and broader social and environmental implications.
Environmental Overview

Environmentally preferable products and services are defined as those that have a lower impact on the environment over the life cycle of the product or service, when compared with competing products or services serving the same purpose.

There are significant variations in the sustainability impacts associated with different commodities. In order to ensure that damage to the environment is minimised, it is necessary to determine the impacts that are most significant for a particular commodity.

Key environmental issues which might be considered over the life cycle of the product/service include:

- energy use, and type of energy utilised;
- water use and water quality impacts;
- resource use, including the use of non-renewable resources;
- volume and type of waste;
- end-of-life options, e.g. recyclability, resource recovery;
- impact on natural habitat;
- level of toxic and hazardous substances/waste; and
- noise, pollutants and emissions.

Desirable outcomes/benefits (examples only):

- Improved air quality by reducing or eliminating emissions to air (e.g. greenhouse gases, such as carbon dioxide, and other pollutants);
- Reduced use of water (e.g. water saving or efficiency);
- Improved water quality by reducing or eliminating releases to water (e.g. chemical pollution of water courses);
- Improved soil quality by reducing or eliminating releases to land (e.g. chemical fertilisers);
- Reduced demand on raw materials and natural resources (e.g. sustainable forestry, biodiversity);
Reduced use of energy (e.g. energy efficiency, use of renewable energy);
Reduced energy emitted (e.g. heat, radiation, vibration, noise); and
Reduced waste and by-products (e.g. recycling and waste prevention).

Where it is not possible to calculate dollar benefits associated with environmental impacts, they can be described in other quantitative terms, for example:

- energy use (Kwh);
- usage (megalitres);
- resource use (kg per product);
- waste production (kg per product, or percent of product);
- packaging type and quantity (kg per product); and
- wastewater parameters (BOD, TSS, P, flow).

Social

Social benefits: Being sustainable is also considering the social factors of a product or service. Suppliers can be socially responsible by adopting ethical practices and being compliant with legislative obligations and other actions that benefit society including inclusiveness, equality, diversity, regeneration and integration.

Social impacts that can be taken into consideration across sustainable procurement activities include:

- supporting suppliers to government who are socially responsible and adopt ethical practices;
- considering human health impacts;
- supporting the use of local and emerging small businesses;
- supporting socially inclusive practices, such as employment and training focused on disadvantaged groups;
- assessing the impact of occupational health and safety concerns (both here and abroad); and
- ensuring compliance with relevant regulatory requirements.

Economic

Overview

Sustainable procurement can contribute directly to economic (financial) outcomes including cost savings, for example:

- procuring products and services that are more efficient to operate and thereby reduce operating costs (including consumables, energy, water and time);
- capital procurement that achieves reduced through-life costs, e.g. through reduced annual operating and maintenance costs;
- re-examining requirements, and where appropriate challenging demand at source, so as to avoid procurement in excess of needs;
- reducing end of life disposal costs and impacts; and
- driving supply chain efficiency and developing market competitiveness, innovation and capacity.
Some products that may appear more expensive in terms of up-front acquisition cost may in fact provide greater economic benefit over the whole life of the product.

**Desirable outcomes/benefits (examples only):**
- reduced whole-of-life costs to achieve value for money, including cost savings;
- supply chain efficiency;
- job creation (e.g. green technologies, use of local suppliers, creating markets for recycled products, back to work schemes);
- supporting small and medium enterprises;
- reducing entry barriers (e.g. facilitating open competition);
- ensuring suppliers' agreements are at fair and viable margins; and
- ensuring business continuity (e.g. supply chain resilience).

**Planning for Sustainability**

Wherever possible, sustainable procurement considerations should be integrated into the procurement process at the very outset – i.e. at the early procurement planning stage. This should certainly be the case with high value procurements involving a public tender and the development of a procurement plan.

**Demand Management & Analysis Strategies**

Before embarking on a proposed procurement, public authorities are encouraged to consider relevant demand management strategies that can potentially reduce overall consumption levels, identify more sustainable alternatives, or in some cases negate the need to undertake the procurement.

During demand analysis, consideration should be given to the required outcome sought from the procurement and whether the ‘need’ can be met by alternative means. For significant procurements, it is important to articulate how sustainability may contribute to the ‘value for money’ proposition.

Demand management may also include a stakeholder consultation where key stakeholders should be identified and sustainability issues introduced into discussions regarding the proposed procurement and its objectives. This will facilitate a better understanding of what sustainability considerations might be incorporated into the requirement specifications. End users, business analysts and technical officers are important stakeholders in this process, as they may be responsible for or have a major influence over developing the specifications.

**Sustainability Impact Assessment**

Depending on the value, sensitivity and complexity of a proposed procurement, there are a number of actions that a public authority or procurement officer can undertake in order to better understand the sustainability aspects and implications. During the procurement planning stage a sustainability impact assessment may be undertaken. The assessment helps to:
- prioritise those procurements with high sustainability impacts; and
- understand the whole of life environmental and social impacts associated with the product or service to be procured. This will assist in determining the specific sustainability issues, risks and opportunities that the procurement will address and support.
A score of 24 on the Sustainability Impact Scoring Chart included below indicates a procurement activity for a product or service with high sustainability impacts.

Table 1: Sustainability Impact Scoring Chart

<table>
<thead>
<tr>
<th>Criteria/Question</th>
<th>Rating/Score</th>
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| Does the procurement have a significant environmental or social impact/risk?      | 3 High – significant environmental or social impact/risk.  
  2 Medium – some environmental or social impact/risk.  
  1 Low – little or no environmental or social impact/risk.                                      |
| What degree of influence does the public authority have in the particular supply market? | 3 High – high level of influence.  
  2 Medium – moderate level of influence.  
  1 Low – minimal influence.                                                                      |
| Does the supply market have a proven sustainable procurement capability?*          | 3 High – strong and proven capability.  
  2 Medium – moderate capability.  
  1 Low – little or no capability.                                                                |
| Does the procurement align with or support the public authority’s strategic and sustainable business goals? | 3 High – strong alignment.  
  2 Medium – some alignment.  
  1 Low – little or no alignment.                                                                 |
| How much effort and cost will be required to implement and contract manage the sustainability requirements? | 3 High – little effort and resources will be required.  
  2 Medium – moderate effort and resources will be required.                                      
  1 Low – significant effort and resources will be required.                                       |
| How difficult will it be to encourage end users to change their current practices? | 3 High – little effort and resources will be required.  
  2 Medium – moderate effort and resources will be required.                                      
  1 Low – significant effort and resources will be required.                                       |
| Are there any links with other sustainability initiatives underway within the public authority or elsewhere in government? | 3 High – strong links with other sustainability initiatives.  
  2 Medium – some links with other sustainability initiatives.                                      
  1 Low – no links with other sustainability initiatives.                                           |
| What is the availability of sustainability expertise within the public authority to undertake the procurement? | 3 High – suitable expertise exists and is available.  
  2 Medium – some expertise exists and may be available.                                             
  1 Low – in-house expertise does not exist.                                                        |

* The APCC’s Assessing a Supplier’s Sustainability Credentials provides a useful tool for gauging the capacity of a supplier or industry to meet sustainability requirements – see www.apcc.gov.au under Procurement > Procurement Publications.
Appendix

Contract Formation

In the previous section on procurement planning it was recommended that as a minimum, a procurement plan should identify the likely sustainability impacts of a proposed procurement, the associated sustainability objectives and priorities, and sustainability approach options. This information becomes critical in ensuring that the subsequent Request document adequately addresses sustainability considerations – irrespective of the form the Request is to take.

The use of appropriate, well defined qualitative criteria can enable potential respondents to compile their offers in a manner that demonstrates their sustainability credentials and claims, and assists an evaluation panel to compare and assess the relative strengths and weaknesses of each potential supplier based on the merits of their offer. Depending on the procurement, sustainability issues may be covered by a separate qualitative criterion with its own weighting, or incorporated within other criteria such as business systems and processes or organisational capability.

While the specific nature of the product or service to be delivered tends to be the focus of the specifications section of a Request, the qualitative requirements section typically emphasises the experience, capacity and service levels of the respondent. Increasingly criteria specifically related to a supplier’s sustainability profile and performance are being used in the evaluation stage of procurement processes. In addition to assessing the sustainability of the products or services on offer, it is important to capture information about a potential supplier’s own sustainability performance and capacity to manage the sustainability impacts of their business.

Clearly it is important to develop qualitative criteria that are relevant to the procurement and the market in question, and which can validly be applied to all potential respondents. For example, many small businesses do not have an accredited Environmental Management System in place. Nevertheless, they can still be asked to provide information about what steps they are taking and/or proposing to take to improve the sustainability of their business practices and to minimise environmental impacts appropriate to that industry (e.g. water usage and disposal, waste minimisation, packaging reduction, energy efficiency, etc).

Sustainable Approach Options

Consideration should be given to determining how sustainability will be addressed. The approach adopted will be influenced by such factors as the severity of the sustainability impact; the maturity and number of suppliers in the market; the criticality of the supply arrangement; the contract value and term; and any regulatory frameworks covering the industry.

Sustainability may be addressed by:

- inviting only those suppliers that market research has shown meet a mandatory sustainability requirement; e.g. in a limited market where only a few suppliers can offer a particular recycling service.
- including minimum accreditations that respondents must have in order to pass through the desk top assessment stage of an evaluation; e.g. possessing a license to operate a high temperature incinerator or having an ISO 14001 certified Environmental Management System. These will be included as pre-qualification requirements, which must be specified with extreme caution as respondents will be excluded from consideration if they do not comply with the pre-qualification requirements.
- including requirements that encourage respondents to offer items that meet or exceed the Request’s sustainability specifications and/or special conditions of contract; e.g. white goods must have Energy Star rating above a specified threshold.
including a requirement that respondents provide information on a range of sustainability related criteria in order to allow their sustainability credentials to be scored and/or compared; e.g. provide evidence of any program or initiative your organisation has in place to minimise/reduce the amount of packaging used.

including a contractual requirement that respondents should move to the provision of more sustainable products over time, should they be awarded a contract; e.g. the supplier to increase the proportion of products covered by a certain class of environmental label over the term of the contract.

including contract clauses and/or key performance indicators that aim to achieve a specified level of sustainability performance; e.g. quarterly reporting on the proportion of products offered covered by a recognized environmental label.

Contract Management

Monitoring Sustainable Performance

Where a contract includes sustainability provisions or specific sustainability key performance indicators (KPIs), public authorities must monitor contractor compliance with these provisions. Sustainability KPIs must be measurable and clearly defined. The contract should specify actions that may result if there is a downward trend or fall in performance against any agreed benchmark or threshold. Potential approaches to addressing sustainability through KPIs may include:

- setting specific targets or actions that the supplier is required to meet within a prescribed timeframe — e.g. requiring a contractor that indicated in their offer they were moving towards implementing an ISO 14001 accredited Environmental Management System, to achieve accreditation within one year of contract commencement.

- requiring a contractor to progressively increase the sustainability performance of their products — e.g. a minimum of 30% of a supplier’s product catalogue have a certain environmental certification or eco-label standard within two years of contract commencement, and this is to rise to 40% by the end of year four.

- requiring supply chain initiatives or reporting — e.g. reporting on the origin and certification of products or components (such as imported timbers).

- requiring contractors to provide a general update (e.g. an annual report) on their progress, initiatives and innovations relating to sustainability.

In order to have the information available to measure the benefits associated with sustainable procurement, it is vital that related performance measures and reporting requirements are specified in the Request document. It is then the responsibility of the contract manager to proactively manage the contract and ensure that KPIs are monitored and reporting requirements met.

Purchasing from a Standing Arrangement

With CUAs, standing offer arrangements or preferred supplier panels, where a range of buyers utilise a contract on an on-going basis, it is critical that buyers are educated and kept informed about the sustainability objectives and buying arrangements/rules for the contract. Ideally, contract developers and managers should produce guidance material for contract users/buyers that specify the most sustainable products or services available under the arrangement and highlight the key sustainability impacts and issues associated with utilising the contracted items.
Where applicable, the guidance material (i.e. Buyers’ Guide, fact sheet, smarter buying brochure, product catalogue, etc) should also detail potential demand management strategies. For example, the Buyers’ Guide for a contract supplying copy paper might recommend that agencies set their printers to default to duplex printing in order to reduce paper usage, as well as providing information regarding the recycled content of different papers available under contract.

As a minimum, buyers should be made aware of the sustainability implications of their buying behaviour and how they may minimise negative impacts. There is no point building in more sustainable options into such contracts without educating the buyers accordingly.

**Contract Review**

At the end of a contract, or when deciding whether to exercise any available extension options sustainability performance should be included as part of the contract review process. Before deciding if a contract should be renewed or extended it is important to:

- review performance against the agreed sustainability KPIs;
- determine whether the desired sustainability objectives have been met and/or exceeded, and whether they still align to the Government’s and/or the public authority’s sustainable procurement strategy;
- assess whether the public authority’s value as a client has changed or whether the market has changed (i.e. are there new suppliers in the market or new, more sustainable products available); and
- document findings and lessons learned, so that this information can be used in the planning stage for any future contract.
Appendix – Glossary of Terms

The following glossary covers the defined terms appearing in the Procurement Practice Guide.

**Addendum** means the additional information about the Request, provided after the initial advertising date.

**Accountable Authority** means the officer responsible for purchasing undertaken by a Public Authority. This is usually the Public Authority’s Director General, Chief Executive Officer or their delegate.


**Bid**: an offer by one party to enter into a legally binding contract with another party, often used interchangedly with quote, tender, response and offer.

**Bidder** means the party offering to enter into a legally binding contract with another party.

**Bona fide sole source of supply** means a situation where it has been clearly established that only one supplier can supply the requirement. This can be established either through a periodic test of the market or consultation with appropriate industry bodies, manufacturers and other sources of expertise.

**Buyers’ Guide** means the document outlining the rules of access and buying in relation to common use arrangements or agency specific panel contracts.

**Common Use Arrangement** means a Whole-of-government contract arrangement, established for use by all public authorities, and indicated as a Common Use Arrangement in the Specification.

**Contract** means a legally binding agreement resulting from acceptance of an offer by the Contract Authority or the Customer, including such modifications that may have been agreed between the Contract Authority or the Customer and the respondent before that acceptance.

**Contractor** means a Respondent whose offer has been accepted by the Accountable Authority with or without modification.

**Contract management plan** means a plan containing all the pertinent information about how the contract is to be managed and which identifies and addresses all relevant issues through the life of the contract.

**Covered procurement** means a procurement of goods or services that is subject to the terms and conditions of the government procurement chapter of either the Australia-United States Free Trade Agreement, the Australia-Chile Free Trade Agreement, the Korea-Australia Free Trade Agreement or the Japan-Australia Economic Partnership Agreement.

**Debrief**: the process of advising unsuccessful respondents by request and on a no commitment basis, of potential improvements to their bids which, if made, would make them more competitive for future needs.

**Due Diligence**: the process of reviewing and analysing in detail the capacity of a bidding organisation to meet future contract performance requirements. This may include a detailed assessment of the organisation’s financial stability, legal risks, technical capacity and infrastructure.

**Direct purchase** means the procurement of products and/or services by placing an order directly with the supplier of choice.

**Emergency situation** means a situation existing that threatens life, property or equipment.
**Expression of Interest (EOI):** identifies potential suppliers interested in, and capable of, delivering the required products or services. Potential suppliers are asked to provide information on their capability to do the work. It is usually the first stage of a multi-stage tender process.

**General Conditions of Contract:** contractual terms which define the obligations and rights of the parties involved in the contract, and form the basis of the contract awarded to the successful tenderer.

**Finance** means the Western Australian Department of Finance.

**Goods:** Goods as defined in subsection 60(1) of the *Sale of Goods Act (1895)*, to be supplied by a contractor under a contract. For the purposes of this document products mean goods.

**Late tender:** a tender received after the specified closing date and/or time.

**Lodgement Address** means the address shown in the Request, to which an offer must be addressed.

**Memorandum of Understanding (MOU):** a document which is used to record the intentions of parties in a less formal way than a conventional contract document, and is not legally binding unless it specifically states that it is intended to be enforceable in the courts.

**Offer** means the offer submitted by the Respondent in response to the Request.

**Panel contracts:** contractual arrangements with more than one supplier, to supply products and/or services. Often a standing offer with agreed rates but without guaranteed volumes.

**Price** means the total price of a procurement for the total period of the contract, including extensions and GST.

**Procurement** means the entire process for obtaining all class of resources (human, material, facilities and services). It can include planning, design, standards determination, specification writing, preparation of quotation and tender documentation, selection of suppliers, financing, contract administration, disposals and other related functions.

**Procurement plan** means a project management tool that provides a framework for procurement. The procurement plan outlines the key issues that both determine and impact the procurement strategy and method adopted.

**Procurement Policy or Procurement Policies:** supply policies issued under and in accordance with section 28 of the *State Supply Commission Act (1991)*.

**Product** means a product deliverable specified in the Contract Documents that is to be supplied to the Customer by or on behalf of the Contractor.

**Public Authority** means:

- A department of the Public Service of the State established or deemed to have been established under the Public Sector Management Act (1994); and
- An agency, authority or instrumentality of the Crown in right of the State.

**Open tender** means the process of publicly inviting offers to supply products or provide services involving specifications and detailed documentation.

**Request** means any request by Finance or other government agencies for the submission of tenders, offers, proposals, expressions of interest or other like submissions capable of resulting, with or without further negotiation, in a contract, and includes any RFQ or open tender.

**Request for Quotation (RFQ):** a written process of inviting offers to supply products and/or services involving simple documentation and a limited number of potential suppliers.
**Respondent** means someone who has or intends to submit an offer to a Public Authority.

**Response to Selection Criteria** means the provision of information relating to the Selection Requirements, as contained in Part B of a Request.

**Selection Criteria** means the requirements used in evaluating respondents’ responses.

**Services** means the whole of the services, tasks, work and requisites to be supplied, rendered, provided or performed by a contractor under a contract and any variations provided for by the contract, and includes all and any products, materials, plant, machinery or equipment supplied, provided or used by the contractor in performance of the contract.

**Specification**: sets out details of the performance required under a contract.

**State Tender Review Committee** means the administrative, advisory committee established by Finance to review high value, high-risk procurement processes.

**Supply Policy** or **Supply Policies** means supply policies issued under and in accordance with section 28 of the **State Supply Commission Act (1991)**.

**Tender**: a document in the form of an offer to supply products and/or services, usually submitted in response to a public or selective invitation such as a Request or RFQ.

**Tender box**: a secure location within which tenders, offers, quotations or bids are placed.

**Tenders WA** means the WA Tendering System (www.tenders.wa.gov.au) providing direct access to Government contracting information, including early tender advice to suppliers, advertising of tenders, electronic tender lodgement and award of Government contracts valued at $50,000 and above.

**Total Contract Value** means the estimated total value of the contract for the entire life of the contract, including extensions.

**Validity Period** means the period of time for which an offer will remain open for consideration and acceptance by the Public Authority.

**Value**: any reference to a value in this document is a reference to that value inclusive of GST.

**Verbal quotation** means a verbal process of inviting offers to supply products and/or services involving a limited number of potential suppliers.

**Written quotation** means a written process of inviting bids to supply products and/or services involving simple documentation and a limited number of potential suppliers.