OPEN AND EFFECTIVE COMPETITION

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.

Procurement Methods

The following table sets out the minimum requirements that a public authority must use to procure goods and services, unless using a common use arrangement or a specific exemption is approved.

Monetary Threshold[1]	Minimum Requirements
Up to $50,000	• Public authorities may determine the most appropriate procurement method including direct sourcing, or verbal or written quotations based on assessment of the nature of the market, complexity and risk, and process efficiency. • Appropriate documentation of decisions must be retained.
$50,000 up to $250,000	• Request quotations in writing. • Offers must be received in writing.
$250,000 and above	• Open tender through a public advertisement.

The table above sets out the minimum requirements only. A public authority should also consider the nature of the market, complexity and risk, process efficiency or any other relevant factors when selecting the procurement method.

Exemptions from Minimum Requirements

A public authority is not required to comply with the minimum requirements in the table above if:

- the Accountable Authority or delegate considers that circumstances exist which support the minimum requirements not applying; or
- an emergency situation arises; and
- justification for the decision is documented.

Circumstances where the minimum requirements may not apply include, but are not limited to the following:

- 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.

[1] Monetary thresholds are based on the total estimated value, including any extension options, and are inclusive of GST.

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- A public authority requires the use of goods 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.
- Where direct negotiations or the preferred service provider provisions of the *Delivering Community Services in Partnership Policy (DCSP Policy)* are applied.

Where the total estimated value of the proposed procurement exceeds the covered procurement[2] threshold under any of the Free Trade Agreements (FTAs) held by the Australian Government, the grounds for exemption from the open tender process, outlined above, may not be applicable. This is due to the requirements of selective and limited tendering processes included in the government procurement chapters of the FTAs.

A partially exempt public authority must obtain advice, in accordance with their partial exemption, from the Department of Finance prior to proceeding with an exemption from the minimum requirements, particularly where the estimated value exceeds the covered procurement threshold under any of the FTAs held by the Australian Government.

Purchasing from an Australian Disability Enterprise or an Aboriginal Business

Where there is an opportunity to procure from:

- a business that primarily exists to provide the services of persons with a disability and that business is a registered Australian Disability Enterprise[3]; or
- a registered Aboriginal Business[4];

then a public authority may procure directly from those entities without complying with the minimum requirements. Partially exempt public authorities are not required to obtain advice from the Department of Finance when procuring from Australian Disability Enterprises or Aboriginal Businesses.

Involvement of the Department of Finance

A partially exempt public authority[5] must involve the Department of Finance where the total estimated value of the proposed procurement or variation[6] is $250,000 or above[7], in accordance with the terms and conditions of its partial exemption.

A partially exempt public authority is not required to comply with this requirement if the procurement is undertaken under the DCSP Policy. In this circumstance, the Department of Finance may agree to provide support on a case by case basis.

[2] Refer to 'covered procurement' in the Glossary of Terms for information on the Free Trade Agreement threshold.

[3] 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 [URL: https://buyability.org.au/directory/].

[4] Reference to the directories of registered Aboriginal Businesses accepted by the Department of Finance may be found in the Aboriginal Procurement Policy Guide [URL: http://www.finance.wa.gov.au/cms/Government_Procurement/Policies/Aboriginal_Procurement_Policy.aspx].

[5] This refers to a public authority with a partial exemption from section 19(1) of the *State Supply Commission Act 1991*.

[6] A 'variation' is defined as any variation in contract spend that exceeds the total contract value or estimated contract value recorded on Tenders WA at the point of the award of the Contract.

[7] 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.

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Avoiding Bias

A public authority must ensure that Request specifications promote open and fair competition. Adequate and consistent information must be provided to all potential bidders. Proprietary products must not be specified unless there are no suitable alternatives or there are sound technical or operational reasons for doing so. Where naming a proprietary product is necessary, the Accountable Authority must approve the naming.

Contract Period

When procuring goods or services that will be delivered over a period of time rather than as a one-off purchase, a contract term or timeframe for completion must be specified. For contracts that are intended to exceed five years, a public authority must demonstrate that there are sound technical, commercial or operational reasons for doing so, or that significant benefits will be delivered to the State. Where the period of the contract exceeds five years, the Accountable Authority must approve the proposed term.

Advertising Open Tenders

Where the total estimated value of the proposed procurement is $250,000 or above a public authority must advertise an open tender on Tenders WA[8,9]. The tender advertising period must be for a minimum of ten working days, except where the proposed procurement is covered under a FTA.

The Accountable Authority may approve an exemption from the minimum tender advertising period, except where the total estimated value of the proposed procurement exceeds the covered procurement threshold under any of the FTAs held by the Australian Government.

Notification to Unsuccessful Bidders

Where a written quotation or open tender process has been used, a public authority must provide unsuccessful bidders with the name and total contract value or total estimated contract value of the successful bidder. Unsuccessful bidders must be provided with a debriefing on request.

Publishing Contract Award and Variation Information

Where the awarded contract value is $50,000 or above a public authority must publish the contract details on Tenders WA after the successful bidder has been notified.

Where the awarded contract value is varied by $50,000[10] or more a public authority must publish the varied contract value on Tenders WA.

A public authority is required to comply with this requirement when purchasing from a Common Use Arrangement (CUA), unless the CUA Buyers Guide states otherwise.

A public authority is not required to comply with this requirement if the Accountable Authority considers that the release of those contract details presents a significant operational risk, such as the potential to compromise security.

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[8] Tenders WA is the central on-line source of information on government tenders and awarded contracts and is available at http://www.tenders.wa.gov.au.

[9] Unless the Accountable Authority has directly engaged a supplier(s) in accordance with this policy.

[10] Either individually or cumulatively.

Application to procurements pursuant to the Market-led Proposals Policy

When procuring pursuant to the Market-led Proposals policy[11], the following must be complied with:

- Except when the proposed market-led proposal is subject to the centrally coordinated evaluation process[12], a partially exempt public authority must involve the Department of Finance in accordance with the terms and conditions of its partial exemption.
- Unless the Accountable Authority considers that the release of those contract details presents a significant operational risk, such as the potential to compromise security, the public authority must publish:
    - the contract details on Tenders WA after the contract has been awarded where the contract value is $50,000 or above; and
    - the varied contract value on Tenders WA where the awarded contract value is varied by $50,000 or more.

All other requirements of this policy do not apply to procurements pursuant to the Market-led Proposals policy.

CHAIRMAN
STATE SUPPLY COMMISSION
GAZETTAL DATE: 12 April 2019

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[11] The Market-led Proposals policy can be accessed through the Finance website here: http://www.finance.wa.gov.au/cms/market-led-proposals/

[12] 'Centrally coordinated evaluation process' means that the evaluation of the market-led proposal is or will be centrally coordinated by the Market-Led Proposal Steering Committee.