

3.17 Pre-qualified Supplier Panels

1. Objective

The objective of this Policy is to ensure that any Pre-qualified Supplier Panels are created in accordance with Regulation 24AC of the *Local Government (Functions and General) Regulations 1996*. A Panel of Pre-qualified Suppliers ("Panel") may be created where the following factors apply:

- The Shire determines that a range of similar goods and services are required to be purchased on a continuing and regular basis;
- there are numerous potential suppliers in the local and regional procurement-related market sector(s) that satisfy the test of 'value for money';
- the purchasing activity under the intended Panel is assessed as being of a low to medium risk;
- the Panel will streamline and will improve procurement processes; and
- the Shire has the capability to establish, manage the risks and achieve the benefits expected of the proposed Panel.

The Shire will endeavour to ensure that Panels will not be created unless most of the above factors are firmly and quantifiably established.

2. Risks being addressed

This Policy, used in conjunction with the Shire's Purchasing Policy, will continue to mitigate probity risk, by establishing consistent and demonstrated processes that promote openness, transparency, fairness and equity to all potential suppliers.

The use of Panels will streamline and improve procurement processes, reducing the risk of non-compliance relating to cumulative expenditure exceeding the tender threshold for regular supply of goods and services without a tender process being undertaken and/or a contract being in place.

3. Scope

All employees with procurement authority - in liaison with the Procurement Team.

Employees must ensure that they hold appropriate delegated authority from the Council or Chief Executive Officer to implement parts of this Policy, especially in relation to *Local Government (Functions and General) Regulation 1996*:

- r.24AB Local government may establish panels of pre-qualified suppliers
- r.24AC (1)(b) Requirements before establishing panels of pre-qualified suppliers
- r.24AD (3) & (6) Requirements when inviting persons to apply to join panel of pre-qualified suppliers
- r.24AH (2), (3), (4) and (5) Rejecting and accepting applications to join panel of pre-qualified suppliers

4. Definitions

Agreement: means the formal arrangement agreed between the Suppliers and the Shire resulting from an Invitation to Apply procurement process. An Agreement resulting from the Invitation to Apply does not confirm upon the Supplier any certainty of Orders. It is only an intent to purchase the Goods and/or Services at an agreed rate. Is interchangeable with Panel Agreement (see below).

Construction (including works): A work (construction) is defined as the carrying out of any improvement on or over any area of land, lake, river or ocean, and any services related to that activity in the prescribed area. This includes the construction of buildings, housing and other public infrastructure as well as related services such as architectural, surveying, facilities management and general maintenance.

Contract: means the formal arrangement agreed between the Supplier and the Shire resulting from the Order (i.e. a purchase) that is placed under the Panel arrangement. A Contract placed under a Panel Agreement must not be for more than 12 months and cannot be extended beyond twelve (12) months.

Electronic Tendering Portal – means either the Shire’s Tenderlink Portal or the WALGA Vendor Panel used for the electronic procurement process utilised to invite Suppliers to provide goods or services under the Panel Agreement.

Goods includes tangible, quantifiable material requirements usually capable of being moved or transported that are purchased, rented, leased or hired by the Shire.

Invitation to Apply means the procurement process by which prospective Suppliers are requested to respond to be considered as representing best value for money for the Shire and appointed to be a Panellist on the Panel.

Offer means the response from someone who intends to supply the requirements stated in an Invitation to Apply.

Order means the confirmed request to purchase under a Panel arrangement resulting in a Purchase Order and Contract being formed for said purchase under the Panel arrangement or Agreement.

Panel means a Panel of Pre-qualified Suppliers established under Regulation 24AC of the *Local Government (Functions and General) Regulations 1996*.

Panel Agreement has the same meaning as Agreement.

Panellist or **Supplier** means a Pre-qualified Supplier that is an approved member of a Panel.

Purchasing or **Procurement** is defined as the entire process by which all classes of resources (including but not necessarily restricted to human, material, plant, equipment, facilities and services) are obtained generally for a local government activity, function or specific project by payment. This can include the functions of planning, design, standards determination, specifications writing, selection of suppliers, financing and other related functions.

Respondent means someone who has or intends to submit an Offer to the Shire in response to an Invitation to Apply.

Services or **Provision of Services** means any task, consultancy, work or advice to be performed or provided that is procured by the Shire. Included are services such as management consultancies, outsourcing, maintenance contract/ agreement, cleaning, waste removal, equipment repairs, external auditors, utilities and services acquired by a private sector provider for the Shire. Excluded are payments made directly to employees, superannuation and pension payments, statutory or involuntary payments and grants, subsidies and transfer payments.

5. Policy Statement

5.1 Establishing a Panel

Should the Shire determine that a Panel is beneficial to be created, it must do so in accordance with Part 4, Division 3 the *Local Government (Functions and General) Regulations 1996*.

Panels may be established for one supply requirement, or several similar supply requirements under defined categories within the Panel.

Panels may be established for a minimum of two (2) years inclusive of all extension options and for a maximum length of five (5) years inclusive of all extension options. In exceptional circumstances, the Shire may establish a Panel for longer than five (5) years, with suitable justification and approval from the Chief Executive Officer. Panel Agreements that are longer than two (2) years must utilise extension options which can only be exercised at the absolute discretion of the Chief Executive Officer.

The Shire may enter into an Agreement with a Supplier for the provision of goods or services under a Panel in accordance with Regulation 24AJ and subject to the following conditions:

- the Contract established under the Panel Agreement may only be for a maximum twelve (12) month term; and
- is prohibited from having any extension of term provisions included in the Contract.

Evaluation criteria must be determined and communicated in the Invitation to Apply process by which Offers will be assessed and accepted.

Where a Panel is to be established, the Shire will endeavour to appoint at least three (3) suppliers to each category, on the basis that best value for money is demonstrated. Where fewer than three (3) suppliers are appointed to a category within the Panel, the category is not to be established unless the Shire proceeds within three (3) months to issue a further Invitation to Apply to augment the number of Suppliers on the category within the Panel.

In each Invitation to Apply to become a Panellist (through a procurement process advertised through a state-wide notice), the Shire must state the expected number of suppliers it intends to put on the Panel. Whilst the appointment of a minimum of three (3) Suppliers is required for the Panel to operate, up to six (6) Suppliers can be considered for appointment to the Panel, provided there is sufficient demand to satisfy the work expectations of a larger Panel size.

Should a Panellist leave the Panel within six (6) months, they may be replaced by the next ranked Respondent to the original Invitation to Apply that was determined in the value for money assessment should the Respondent agree to do so. This intention is to be disclosed in the detailed information set out under regulation 24AD(5)(d) and (e) when establishing the Panel.

If a Supplier leaves a Panel and this results in the Panel being reduced to two (2) Suppliers and the Shire is unable to replace the Panellist, then that Panel may be disbanded, or the Shire may seek to augment the Panel to maintain the viability of the Panel. This intention is to be disclosed in the detailed information set out under regulation 24AD(5)(d) and (e) when establishing the Panel.

Following an Invitation to Apply process and during the term of the established Panel Agreement, if the Shire determines that the number of Suppliers on the Panel or within a category of the Panel is insufficient to meet the requirements of the Shire, then the Shire may seek to augment that Panel or the category within the Panel by undertaking a public Invitation to Apply process with the view to add Suppliers to the Panel.

In establishing the Panel, the qualitative criteria will recognise local content and make a preferential weighting for local suppliers, and regard will be had for the Regional Price Preference Policy of the Shire, where appropriate.

This should be documented in the request document and any subsequent Agreements/Contracts.

A Panel may be approved by the local government (either the Council, or by delegation, the Chief Executive Officer, who may sub delegate – but having regard for the limits of such delegations), following a public Invitation to Apply process and the Chief Executive Officer is authorised to approve works under such a Panel up to a value of \$499,999 ex GST.

In the event that a Panellist is placed into an Administration Event (voluntary or Court appointed), the Panellist will be suspended from the Panel until such time as the Administration ends. It is the obligation of the of the Panellist to advise of the status of any Administration Event.

Council reserves the right to remove a Panellist from a Panel in the event of unsatisfactory performance.

5.2 *Distributing Work amongst Panel Members*

To satisfy Regulation 24AC(2), the distribution of work between the Panellists will be dependent on the nature of the goods or services. The detailed information associated with each Invitation to Apply to join the Panel (the request document) will prescribe one (1) of the following options:

- a) **The Shire will obtain written quotations from a minimum of three (3) Suppliers on the Panel with respect to all purchases.**

This will ensure each Panellist will have the opportunity to submit an Offer for items of work under the Panel, with pre-determined criteria forming part of the Request to Quote to assess the suitability of the Panellist for items of work.

OR

- b) **The Shire will purchase goods and services exclusively from any Supplier appointed to that Panel.**

The Shire will endeavour to distribute the goods or services required between each Panellist evenly, subject to the operational requirements of the Shire at the time those goods and/or services are required. Care will be taken to ensure that no one Panellist is overloaded at any particular time by keeping accurate records of the timelines of each job. In accordance with the Shire's Purchasing Policy, the direct sourcing from a Supplier on the Panel is limited to \$9,999.

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In every instance, a Contract must not be formed with a Supplier for an Order beyond 12 months, which includes options to extend the Contract. If the requirement for an Order needs to exceed 12 months, a new Contract is required at the end of the twelve (12) month term, and **all Suppliers** on the Panel are to be invited to quote for the work i.e. direct sourcing of a Supplier from the Panel is only permitted for a Contract period not exceeding 12 months (including options to extend the contract).

A Panel Agreement needs to be managed to ensure that the performance of the Agreement and the Panel members under the Agreement are monitored and managed. This will ensure that risks are managed and expected benefits are achieved. It will include managing the distribution of work amongst Panellists so

that work is distributed equitably and no one Supplier receives an excessive number of Orders. A Contract Management Plan should be established that outlines the requirements for the Panel Agreement and how it will be managed which includes establishing a comprehensive Panel register.

5.3. *Purchasing from a Panel*

Subject to the stipulated method of awarding works for the specific Panel being utilised, the Officer shall:

- a) Obtain written quotations from the minimum number of Panellists on the Panel. The goods/services are to be awarded based on best outcome for the Shire (*best value for money, quality, timeframe etc*). The officer shall arrange for a Purchase Order to be raised to the Panellist as per the requirements of the Purchasing Policy, utilising the unique Contract Identification Number and the Officer shall make reference to the Supplier Panel being used on the Declaration of Quotes.

OR

- b) If the Shire is purchasing all goods and services exclusively from any Panellist appointed on that specific Panel, the Officer shall distribute the goods or services required between each panel member evenly, subject to the operational requirements of the Shire at the time those goods and/or services are required. Care will be taken to ensure that no one Panellist is overloaded at any particular time by keeping accurate records of the timelines of each job. The officer shall arrange for a Purchase Order to be raised to the Panellist as per the requirements of the Purchasing Policy, utilising the unique Contract Identification Number and the Officer shall make reference to the Supplier Panel being used on the Declaration of Quotes

Should the list of Suppliers invited to quote be exhausted with no Supplier accepting the Order to provide goods/services under the Panel, the Shire may then invite suppliers that are not pre-qualified under the Panel, in accordance with the Purchasing Thresholds stated in the Shire's Purchasing Policy, as per regulation 24AD(5)(f). This is subject to the Invitation to Apply clearly stipulating that the Shire does not intend to purchase exclusively from the Panel.

It is mandatory for the Shire to use its own Panel arrangement for a specific goods and/or services, and/or works in the first instance and prior to using another procurement process to source its requirements.

If the established Panels are unable to meet the Shire's requirement due to lack of availability, product is not fit for purpose or other reason as approved by the Chief Executive Officer, the Shire may undertake another procurement process in accordance with the requirements of the Shire's Purchasing Policy to source the Goods and/or Services, and/or Construction.

6. Compliance and Reporting

The Chief Executive Officer shall:

- implement processes to facilitate this Policy and associated management procedures, and will implement processes to report departures, non-compliance and/or exceptions;
- on a quarterly basis report to the Shire's Audit and Risk Committee any identified non-compliance with this Policy and associated management procedures, and any occurrence of the Chief Executive Officer exercising their discretion to undertake any policy exempt procurement;

- review, and if appropriate, seek to revise this Policy and associated management procedures to ensure ongoing relevance; and
- provide ongoing training for all Shire officers engaged in the use of Pre-qualified Supplier Panels.

A failure to comply with the requirements of this Policy will be subject to investigation. Findings will be considered in context of the Code of Conduct, and reasonable expectations for the officer's performance of their role.

Where a breach is substantiated it may be treated as:

- an opportunity for additional training to be provided;
- a disciplinary matter, which may or may not be subject to reporting requirements under the *Public Sector Management Act 1994*; or;
- where the breach is also identified as potentially serious misconduct, the matter will be reported in accordance with the *Corruption, Crime and Misconduct Act 2003*.

The Chief Executive Officer is authorised to prepare work directions in relation to managing non-compliance with this Policy.

It is the responsibility of all Shire employees undertaking procurement activities to comply with this policy and its supporting systems and procedures. All Shire employees when undertaking procurement activities are required to observe the highest standards of ethics and integrity and act in an honest and professional manner that supports the standing of the Shire of East Pilbara.

All Shire officers, contractors and prospective suppliers are encouraged to report any suspected wrongdoing. Shire officers may make reports in accordance with the Shire's Public Interest Disclosure Guidelines. Contractors and prospective suppliers may make reports to the Chief Executive Officer or the Corruption and Crime Commission.

7. Record Keeping

All records and documents associated with the Panel process must be recorded and retained as defined within the *State Records Act 2000* and the Shire's Record Keeping Policy.

Records of all communications with Panel members, with respect to the quotation process and all subsequent purchases made through the Panel, must be kept. For the creation of a Panel, this includes:

- the Procurement initiation document such as a procurement business case which justifies the need for a Panel to be created;
- Procurement Planning and approval documentation which describes how the procurement is to be undertaken to create and manage the Panel;
- all Invitation to Apply documentation including the public advertisement, submissions received, evaluations of Offers, including clarifications sought;
- negotiation documents such as negotiation plans and negotiation logs;
- approval of award documentation;
- all correspondence to Respondents notifying of the establishment and composition of the Panel such as award letters;

- Contract Management Plans which describes how the contract will be managed; and
- copies of Panel Agreements entered into with Suppliers.

Information relating to the Panel offerings, including details of Suppliers appointed to the Panel, must be kept up to date, consistent and made available for access by all officers and employees of the Shire.

8. Authorisation Details

References:	<i>Local Government Act 1995</i> <i>Local Government (Functions and General) Regulations 1996</i> <i>Divisions 1 and 2</i> <i>State Records Act 2000</i> WALGA Procurement Handbook Shire of East Pilbara Purchasing Policy Shire of East Pilbara Regional Price Preference Policy		
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