



Agile Procurement.

Exceptions to tendering and the benefits of strategic contracting.

In the dynamic landscape of procurement, understanding the nuances of tendering exceptions and strategic contracting approaches allows local governments to be agile to opportunities and transform challenges into excellent outcomes. From relationship contracting through streamlined panel arrangements to agile procurement strategies, local governments can deliver value to their communities quicker and cheaper than they can using public tenders.

Traditional procurement models and regulations require local governments to conduct public tenders for goods, services, projects and disposals of valuable assets to ensure equity of opportunity and to foster competition and value for money in the marketplace. Public tenders can be effective and they exist for good reason, but they can hinder local governments from realising lucrative and beneficial opportunities, particularly in a market where contractor engagement with local government tenders is steadily diminishing.

In Queensland, local governments must follow the default contracting procedures under the Local Government Regulations 2012 (Regulation) unless they have adopted a strategic approach to contracting (discussed later in this article). The default procedures require local governments to conduct a public tender for any procurement worth over \$200,000 ex GST unless an exception applies. Built into the default contracting procedures are a number of exceptions which, when used effectively, give local governments a reasonably broad scope to procure efficiently and effectively without the need for a public tender process in all circumstances.

In this article, we delve into those exceptions and the benefits of them.

The exceptions

Under Chapter 6 Part 3 of the Regulation, local governments can conduct procurements for contracts worth over \$200,000 ex GST without conducting a public tender process by utilising one of the following exceptions:

- **Quote or Tender Consideration Plan:** local governments can resolve to prepare a quote or tender consideration plan and resolve to adopt the consideration plan (both of these resolutions can be obtained at the same meeting). A tender consideration plan allows a local government to determine that a traditional procurement process will not achieve the local government's objectives for a particular procurement activity, and to identify the ways in which the local government will ensure that the alternative procurement process which the local government intends to adopt will ensure that the local government adheres to the sound contracting principles. Once adopted, the local government will then procure in accordance with that plan (instead of by way of a public tender).

- **Contractor List:** Local governments can resolve to establish approved contractor lists through inviting expressions of interest and choosing suitably qualified suppliers based on the sound contracting principles. The contractors on that panel may then be contracted without the need for an extensive procurement process. By establishing contractor lists, local governments can streamline procurement processes for routine or frequent purchases or services, in turn increasing efficiency and reducing administrative time.
- **Pre-qualified Supplier Panel:** Local governments can resolve to establish panels of preferred suppliers through extensive pre-qualifications and establishment processes. The suppliers names on these panels have demonstrated, through pre-qualification, their capabilities, suitability and often pricing models which enable quicker procurements by simply requesting quotes for specific goods or services from suppliers on that panel instead of a public tender.
- **Preferred Supplier Arrangement:** Local governments may establish preferred supplier arrangements for specific goods and services in instances where the goods and/or services are required in large volumes, on a frequent basis, or where better value for money can be achieved by accumulating demand. These arrangements help in streamlining procurement for specialised or critical goods or services, ensuring continuity and quality of product while leveraging the economies of scale through consolidated purchasing.
- **One supplier:** In very few cases, there may be a situation where there is only one suitable supplier for the goods or services to be procured by a local government. In this instance, local governments may engage directly with that supplier without the need to conduct a competitive tender process. This exception is used in extremely rare instances and involves detailed analysis of the market to ensure that there is in truth "only one supplier" reasonably available who can supply the goods or services.
- **Genuine emergency:** In instances of emergencies, such as natural disasters, urgent repairs or global pandemics, where there is an immediate risk to public health, safety or property, local governments can expedite procurement processes to fast-track critical procurements. The exception allows local governments to rapidly respond to unforeseen circumstances.

The judicious use of these tendering exceptions allows local governments to flexibly adapt their procurement strategies according to the varying circumstances of particular procurement/s. By utilising these exceptions effectively, local governments can improve their operational efficiency allowing for the effective management of public resources whilst complying with regulatory requirements.

Although these exceptions appear straightforward, there are nuances to their use which can affect their effectiveness or open a local government up to scrutiny. We recommend seeking legal advice in relation to an exception if you are in any doubt as to the appropriate use of the exception.

Relationship contracting through Panel Arrangements

Under section 232 of the Regulation, local governments may establish panels of preferred or pre-qualified suppliers. The establishment of these panels work towards streamlining the process of engaging suppliers for recurring or anticipated procurements by pre-qualifying suppliers based upon predetermined criteria.

Local governments can drive contractor performance through mutual benefit by limiting the number of panel members to increase available work volumes for contractors which should result in more competitive rates, and by taking a 'hands on' approach to administration of the panel, allowing regular two-way feedback about expectations, performance and outcomes.

Local governments can also implement a two-tiered primary/supplementary panel system to ensure the local government has contractors to call upon in the event of liquidation or ongoing poor performance of a panel contractor, which drives ongoing performance over the lifespan of the panel arrangement.

- **Panel Establishment and Use:** There are many ways that a panel can be established, but the most common process is as follows:
 - The local government will conduct an open market tender and invite interested proponents to tender for selection onto the panel for the ongoing provision of particular works or services. The tender evaluation should include relevant non-price assessment criteria which should be tailored to the particular goods or services.
 - The local government will then evaluate the tender submissions in accordance with the evaluation criteria and sound contracting principles. Once assessed, local government will appoint certain number of providers to be placed on the pre-qualified panel to quote for upcoming contracts.
 - The selected tenderers will, along with the local government, execute a Pre-Qualified Supplier Agreement which sets out how the panel will operate, how the contract work will be ordered from the tenderer and the rights and obligations generally of each party to the Agreement.
 - For the duration of the Agreement, contractors on the panel will be invited to provide quotes for various contracts. No substantive non-price assessments will need to be undertaken, instead the assessment will be reduced to only price specific criteria and the contractors past panel performance (if desired). It is integral that for the duration of the Agreement, that local government actively engages in effective panel management, periodically reviewing the performance of its panel members and assessing and mitigating any risks that arise.
- **Benefits of Panel Arrangements:** Establishing a panel arrangement can provide numerous benefits to local governments, from increasing efficiency to fostering long-lasting collaborative relationships. Some of the benefits to local government include:

- Procurement efficiency increases while procurement cost decreases – by removing the need for a complete tender process each time a contract is needed, local governments have more capacity to undertake a higher volume of procurements and deliver projects more efficiently.
- Future budget planning – by utilising the panel, local governments will be able to easily seek pricing and project specific information readily, allowing them to develop programs and future budgets easily.
- Strong and genuine working relationships – the panel provides local governments with the opportunity to foster collaborative, long lasting working relationships, allowing panel contractors to better understand the local government's needs for the ongoing benefit of the local government.
- Win-win mentality – local governments can opt to include the performance of panel member during the agreement into the quotation assessment criteria for consideration in the evaluation for awarding future contracts. The inclusion of performance metrics transforms the adversarial position between parties and creates a win-win mentality between the local government and panel contractors, leading to better project outcomes.

Adopting a Strategic contracting approach

The adoption of a strategic contracting approach goes far beyond transactional procurement. It encompasses the broader goals of a local government including value creation, risk management and the building of relationships with suppliers. Chapter 6 Part 2 of the Regulation allows local governments to adopt, by resolution, a strategic contracting approach, which gives local governments the freedom to determine its own procurement parameters catered to its own unique needs and budget. The adoption of a strategic contracting approach offers numerous benefits to local governments including:

- tailored thresholds for different procurement processes;
- tailored probity provisions;
- increased engagement with local suppliers, social benefit providers and indigenous suppliers; and
- tailored exceptions to defined procurement activities.

The ability to tailor procurement processes to suit the local government's risk portfolio, procurement maturity and expenditure can result in far greater efficiency, cost and time savings when they are developed and tailored with the appropriate guidance.

If you would like to know more about how to best utilise exceptions to tendering or strategic contracting we will be conducting a free online seminar via Microsoft Teams on Wednesday, 28 August as part of our Government Seminar Series. Please join us at the seminar via this [LINK](#).



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