



# Works Procurement Policy

## 1. Purpose

The Department of Health's Chief Executive Officer (the Department CEO), as System Manager is empowered to undertake the procurement of capital and maintenance works through an Agency Specific Procurement Direction issued to the Department of Health by the Minister for Finance under section 22 of the *Procurement Act 2020*. In turn, the Department CEO has delegated this power to officers within Health Service Providers so as to enable capital and maintenance works to be undertaken across the WA health system.

The *Works Procurement Policy* establishes uniform process and governance requirements that apply to Health Service Providers, and support works procurements.

This Policy sets out the principles which must be applied when capital and maintenance works (hereafter referred to as 'Works') are undertaken by Health Service Providers. It also defines the nature of Works which are suitable to be undertaken by Health Service Providers, and the requirements governing how the Department of Finance can be engaged to undertake Works.

The Policy aims to ensure that procurement of Works will:

- (a) be consistently delivered across Health Service Providers
- (b) comply with relevant legislation
- (c) comply with relevant government policies and principles.

This policy is to be read in conjunction with the *Procurement and Contract Management Policy*.

This Policy is a mandatory requirement under the *Procurement Policy Framework* pursuant to section 26(2)(d) of the *Health Services Act 2016*.

### ***Integrity Statement***

Health Service Provider staff members will conduct procurement activities to the highest standards of integrity, probity and accountability.

In complying with this Policy staff members will ensure that:

- all decisions regarding procurement are made by an appropriately authorised officer, and are transparent and capable of review
- all conflicts of interest are identified, declared and managed in the public interest
- the principles of consistency, impartiality and confidentiality are upheld
- adequate records are maintained to provide for scrutiny and review of decisions.

Staff members will comply with all requirements related to the use of the mandatory *Conflicts of Interest Policy*, and the *Gifts, Benefits and Hospitality Policy*, including requirements to use the mandatory systems to register, declare and seek approval for any conflicts of interest that arise or gifts received.

Please refer to the [Integrity Policy Framework](#) for further details.

## 2. Applicability

This Policy is applicable to all Health Service Providers.

## 3. Policy requirements

### 3.1. General Requirements

Works procurements must also be undertaken in accordance with the following (where applicable):

- (a) The principles of Open and Effective Competition, Value for Money, and Probity and Accountability as set out in:
  - (i) Appendix 1: Open and Effective Competition
  - (ii) Appendix 2: Value for Money
  - (iii) Appendix 3: Probity and Accountability
- (b) [Procurement and Contract Management Policy](#)
- (c) [Procurement Development and Management System Policy](#)
- (d) The applicable Health Service Provider Instrument of Authorisation
- (e) [Buy Local Policy](#)
- (f) [Priority Start Policy](#).

#### 3.1.1. In-house Procurement of Works

This Policy recognises the complex legislative and regulatory requirements which apply to Works, and the importance of ensuring that appropriate expertise and capability is available and applied in undertaking such work.

In recognising the above, Health Service Providers must ensure that when undertaking a Works procurement in-house (that is, managing and facilitating the procurement process, including any contract administration that may be required post contract award), the following criteria are satisfied:

- (a) the Health Service Provider must demonstrate to the satisfaction of the Department CEO, that it has the requisite expertise and capability available to competently undertake the work; and
- (b) the estimated value of the procurement must be below the In-House Value Limit as set out in In-House Value Limit.

In evaluating its expertise and capacity available to undertake a Works procurement, Health Service Providers must consider the nature of the Works, along with the complexity and risk profile (refer to Section 3.2 *Evaluating Risk and Complexity*) of the Works.

Where the above criteria are not satisfied, Health Service Providers must engage the Department of Finance or other suitable WA Government Department to undertake the

Works (refer to [Section 3.1.2 Department of Finance Managed Works](#), [Section 3.1.3 In-House Value Limit](#)).

### **3.1.2. Department of Finance Managed Works**

Health Service Providers may elect to engage the Department of Finance to undertake the procurement of any Works, even if the Works falls within the In-House Value Limit.

Where the Department of Finance is engaged by Health Service Providers to undertake Works procurement, the engagement is subject to the following conditions:

- (a) The Department of Finance must be provided with sufficient notice prior to the commencement of the procurement to prepare and establish an agreed approach and timeframe for the required procurement.
- (b) The amount of time required for sufficient notice will depend on the nature of the Works required. Large programs of Works will require earlier notice to organise and agree upon appropriate arrangements. Where it is intended for the Department of Finance to undertake maintenance and/or works, it is recommended that notice be provided at the earliest possible opportunity.
- (c) The Department of Finance must be engaged to undertake the entirety of the Works (from commencement to completion). As such, this will mean the decision to engage with the Department of Finance must be made in the project planning and initiation stage, prior to the commencement of any works, procurement, or contractual commitment.
- (d) The Department of Finance will liaise with the Health Service Provider (whomever contacted it) regarding the particulars of the project, and make a determination of its own capacity and ability to manage the project.
- (e) The engagement will be subject to any formal agreement in force at the time of the engagement, governing the provision of such services between the Department of Finance and the Health Service Provider.

### **3.1.3. In-House Value Limit**

The In-House Value Limit is \$2 million (excluding GST) as stipulated in the Agency Specific Procurement Direction issued by the Minister for Finance to the Department of Health.

Health Service Providers must not undertake the procurement of Works with an estimated value above this limit without prior approval through the Department CEO from the Department of Finance CEO, and a delegation of power from the Department CEO. If Works with an estimated value above the In-House Value Limit need to be undertaken, and approval has not been provided by the Department of Finance CEO, Health Service Providers must engage the Department of Finance or another WA Government Department able to undertake Works to undertake the required procurement.

The value of a Works procurement for the purposes of the In-House Value Limit will include:

- (a) the total value of the Works component of any contract, including the value of contract extension options, and associated contingencies;
- (b) if the Works are part of a project, the aggregate value of the Works components within all contracts under the project; and

- (c) if the works are part of a program of Works (multiple projects), the aggregate value of all Works components within all contracts under the program of Works.

## 3.2. Evaluating Risk and Complexity

### 3.2.1. Capital Works

In evaluating the risk and complexity of a given project, consideration must be given to the characteristics of the project.

The table below outlines the scope of requirements for projects which are likely to be suitable for being undertaken in-house by Health Service Providers. Works that are not consistent with this scope must not be undertaken in-house by Health Service Providers.

Item	Scope of Requirements for In-House Capital Works / Projects
1.	Construction, erection or assembly of a – (a) Class 10a building (shed, gazebo or the like) that has a floor area less than 100 m <sup>2</sup> , and (b) Excluding walkways linking two buildings. Refer Item 3.
2.	Construction, erection or assembly of a – (a) Class 10b structure excluding retaining walls. Refer Item 4.
3.	Construction, erection, assembly of a walkway linking two buildings that – (a) has a maximum width of 2.4 m; and (b) is no more than 4 m in height from floor level; and (c) the floor level is, on average, less than 1.5 m above the finished ground level; and (d) is not located in wind region C or D as defined in AS 1170.2.
4.	Construction of retaining walls that – (a) The effective height of the wall is less than 1.5 m.
5.	Construction of roads and car parks at grade including associated works, for example, drainage, lighting and security.
6.	Placement of transportable structures, including associated works, that – (a) has a floor area less than 200 m <sup>2</sup> ; and (b) the structure is a single storey; and (c) the floor level is, on average, less than 1.5 m above the finished ground level; and (d) is not located in wind region C or D as defined in AS 1170.2.
7	Alteration, renovation, improvement, repair or maintenance of a building or incidental structure if the building work – (a) will not adversely affect the structural soundness of the building or incidental structure and does not include – (i) an increase or decrease in the floor area or height of the building or incidental structure; or (ii) underpinning or replacement of footings; or (iii) the removal or alteration of any element of the building or incidental structure that is contributing to the support of any other element of the building or incidental structure; and (b) is done using materials commonly used for the same purpose as the

	<p>material being replaced; and</p> <p>(c) will not adversely affect the safety and health of the occupants or other users of the building or incidental structure or of the public; and</p> <p>(d) will not affect the way in which the building or incidental structure complies with each building standard that applies to the building or incidental structure.</p>
8	<p>Replacement of a building's plant and equipment or site engineering services if the work –</p> <p>(a) will not adversely affect the structural soundness of the building or incidental structure and does not include –</p> <p>(i) the removal or alteration of any element of the building or incidental structure that is contributing to the support of any other element of the building or incidental structure; and</p> <p>(b) is a like-for-like replacement; and</p> <p>(c) will not adversely affect the safety and health of the occupants or other users of the facility; and</p> <p>(d) will not affect the way in which the plant and equipment or engineering service complies with each standard.</p>

### 3.2.2. Maintenance Work

In evaluating the risk and complexity of a given maintenance requirement, consideration must be given to the characteristics of the maintenance requirement.

The table below outlines the scope of maintenance requirements which are likely to be suitable for being undertaken in-house by Health Service Providers. Works that are not consistent with this scope must not be undertaken in-house by Health Service Providers.

Item	Scope of Requirements for In-House Maintenance Work
1.	Any planned, scheduled or routine maintenance that is undertaken to maintain an item in accordance with the manufacturer's recommendations, legislation, relevant standards, or other appropriate specifications.
2.	Any breakdown or reactive maintenance that is undertaken to address any item failure, by making it safe, or restoring the item to its functional condition.
3.	Any restorative maintenance that –
	<p>(a) brings an item back to its original state or functional condition, and</p> <p>(b) which does not fall into that work described under the Scope of Requirements for In-House Capital Works / Projects.</p>

### 3.2.3. General Considerations

In addition to the above, consideration must be given to all other factors relevant to assessment of risk for a given Works procurement.

Where the scope of a Works procurement falls outside what is described in the above tables, or is otherwise assessed to contain significant risk, the Department of Finance must be engaged to undertake the Works.

### 3.2.4. Exemption to Undertake Complex Works

The Executive Director, Infrastructure and Major Capital Projects Directorate, Department of Health may grant an exemption from the requirement that Health Service Providers not

undertake capital or maintenance works which contain significant risk, or are outside the scope of requirements set out in [section 3.2](#) of this Policy.

This exemption does not affect the requirements associated with the In-House Value Limit, as set out in [section 3.1.3](#) of this Policy.

### **3.3. Register of Works**

Health Service Providers must each maintain a register of Works procurements valued at \$50,000 (excluding GST) or more which they undertake under this Policy. Such a register may take the form of records mandated under other policy requirements (e.g. the Procurement Development Management System).

Under the conditions of the Agency Specific Procurement Direction, this register of works procurements must be reported to the Department of Finance annually, within 90 days of the end of each financial year.

## **4. Compliance monitoring**

Health Service Providers must ensure the requirements under this policy are properly documented and recorded. Health Service Providers are required to monitor their compliance with this policy.

As deemed necessary the System Manager may request that Health Service Providers submit compliance evidence in relation to the requirements of this Policy. In these cases the System Manager will work with Health Service Providers to agree on the information to be provided and timeframes this is required within.

## **5. Related documents**

The following documents are mandatory pursuant to this Policy:

- N/A.

## **6. Supporting information**

A range of documents and templates that inform this Policy (i.e. documents that are not mandatory to the implementation of this policy but may support the implementation of the Policy) are available.

- The [Office of the Chief Procurement Officer](#) provides a range of templates and guides. This includes a range of Request templates and associated documents which support the establishment of contracts within the Works environment, and other templates which support the documentation of internal decision making processes, and other processes specific to the WA health system.
- Two documents in particular are specific to the WA health system, and have been published to enable public access:
  - the [Service Delivery Procedures](#); and
  - a specific version of the [Request Conditions and General Conditions of Contract](#), which has been prepared to operate in conjunction with the Request templates provided for contracts within the Works environment.

- In addition, the [Department of Finance](#) also maintains a suite of templates and guides on its website, which support procurement and contract management processes as applied across Government.

## 7. Definitions

The following definition(s) are relevant to this Policy.

Term	Definition
Instrument of Authorisation	The instrument through which an officer has been provided with the authority to approve, action or otherwise make a decision in relation to an identified matter.

## 8. Policy contact

Enquiries relating to this Policy may be directed to:

Title: Office of the Chief Procurement Officer

Directorate: Health Support Services

Email: [ocpo@health.wa.gov.au](mailto:ocpo@health.wa.gov.au)

## 9. Document control

This mandatory policy will be reviewed as required to ensure relevancy and currency.

Version	Published date	Effective from	Effective to	Amendment(s)
MP0013/16	1 July 2016	1 July 2016	28 February 2017	Original version
MP0013/16 v1.1	1 March 2017	1 March 2017	14 May 2017	Minor updates
MP0013/16 v2.1	15 May 2017	15 May 2017	4 October 2018	Provision for CPO to grant exemptions to section 3.2 scope restrictions. Addition of General Conditions, and Service Delivery Procedures to website.
MP0013/16 v3.1	5 October 2017	5 October 2017	1 January 2019	Responsibility for granting exemptions from section 3.2 scope restrictions now moved to the Director, HIU. Minor update to make clear that the CPO is a HSS position. Appendix 1 OEC amended to update value limit for exemption to

				engaging with Aboriginal businesses.
MP0013/16 v3.2	2 January 2019	2 January 2019	12 August 2019	References to 'Authorisations Schedule' replaced with 'Instrument of Authorisation'. Policy application section amended to apply Systemwide, instead of listing individual Health Service Providers. Appendix 1 updated as follows to align with current SSC Policy: \$250,000 threshold restriction for Aboriginal Businesses removed New link for the ADE website New reference for aboriginal business directory
MP0013/16 v.4.0	12 August 2019	12 August 2019	27 August 2019	Grounds for exemption as set out in Appendix 1 have been amended to be consistent with the <i>Procurement and Contract Management Policy</i> . Position reference identifying who grants exemptions from scope requirements under this Policy has been updated to reflect organisational structure change. Addition of Integrity Statement. Policy no longer applies to the Department of Health. Further minor amendments made to improve clarity and consistency throughout policy.
MP0013/16 v.4.1	27 August 2019	27 August 2019	9 December 2019	Minor Amendment: addition of an OCPO Supporting Information document: <i>Request Conditions and General Conditions of Contract</i> (June 2015)
MP0013/16 v.4.2	9 December 2019	9 December 2019	02 September	Minor Amendment: Service Delivery Procedures republished under the Supporting information of this Policy.
MP0013/16 v.4.3	02 September	02 September	Current	Minor Amendment: References to Exemption Order replaced with Agency Specific Procurement Direction, in line with changes introduced under the <i>Procurement Act 2020</i> . References to Building Management and Works (BMW) replaced with general reference to



				Department of Finance, to reflect Department of Finance restructure. Exemptions under section 3.2.4 now granted by Executive Director position, reflecting changes in Department of Health organisational structure. Section 6 website links updated.
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## 10. Approval

Approval by	Dr David Russell-Weisz, Director General, Department of Health
Approval date	24 June 2016

# APPENDIX 1 – Open and Effective Competition

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## 1. Appendix 1: Open and Effective Competition

Health Service Providers must apply open and effective competition when undertaking Works procurement, to provide suppliers with fair and equitable access to tendering opportunities and maintain transparency and integrity in procurement processes.

## 2. Preamble

### 2.1. Definitions

For the purposes of this appendix:

"Accountable Authority" means the officer identified in the relevant section of the applicable Instrument of Authorisation.

"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.

"Covered Procurement" means a Works-related procurement that is subject to the terms and conditions of the government procurement chapter of any of the Free Trade Agreements held by the Australian Government.<sup>1</sup>

### 2.2. Background

Competition is one way of demonstrating that value for money is achieved when procuring maintenance and works. However, the preparation of quotations and tenders can have a significant cost burden on industry. The minimum contract establishment requirements, as referenced in this appendix, have been designed to promote competition whilst minimising the burden to industry.

## 3. Implementing Open and Effective Competition

### 3.1. Procurement Method

The Minimum Competitive Process Requirements as set out in the [Procurement and Contract Management Policy](#) apply when undertaking Works procurement under the In-House Value Limit.

Where the estimated value of the Works procurement exceeds the In-House Value Limit, the Department of Finance must be engaged to undertake the procurement.

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<sup>1</sup> The Free Trade Agreements identify a dollar threshold above which a procurement becomes a covered procurement.

### **3.2. Exemptions from Competitive Requirements**

The minimum competitive requirements outlined in *Procurement and Contract Management Policy* will not apply to a particular Works procurement in an emergency situation or where the Accountable Authority considers that exceptional circumstances exist for that procurement and justification for that decision is documented.

Exceptional circumstances may include, but are not limited to the following:

- (a) there is a bona fide sole source of supply;
- (b) the Accountable 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; or
- (c) a situation which requires the use of goods and services from a particular supplier that must be integrated within an existing contractual arrangement or project and no other alternative is suitable.

### **3.3. Purchasing from an Australian Disability Enterprise or an Aboriginal Business**

Where there is an opportunity to:

- (a) procure from a business that is a registered<sup>2</sup> as either an Australian Disability Enterprise or Aboriginal business; and
- (b) the estimated value of the purchase is below \$50,000 (incl. GST);

Health Service Providers may procure directly from those entities without complying with the minimum competitive requirements and approval for an exemption from the Chief Procurement Officer will not be required. However, evidence that the entity from which such a purchase is made is appropriately registered, must be recorded as part of the documentation for that procurement.

Purchases from a registered Australian Disability Enterprise or Aboriginal business with an estimated value at or above \$50,000 (incl. GST), may be undertaken without complying with the minimum competitive requirements, but will require prior exemption approval from the Chief Procurement Officer, Health Support Services.

### **3.4. Exemptions from Competitive Requirements When a Covered Procurement**

Where the total estimated price of the proposed procurement exceeds the Covered Procurement 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.

Where the estimated price exceeds the Covered Procurement threshold, advice should be sought from the Office of the Chief Procurement Officer before progressing an exemption request.

### **3.5. Avoiding Bias**

Works procurement specifications must promote open and fair competition. Adequate and consistent information must be provided to all potential tenderers.

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<sup>2</sup> A registered Australian Disability Enterprise or Aboriginal business is one that is listed in a corresponding directory identified as suitable by the State Supply Commission.

Wherever possible a generic specification should be used. Where naming a proprietary product is necessary, it should, where possible, be a Western Australian brand and should be used as an example only, with tenderers able to offer an approved alternative. Specifying a proprietary product without permitting alternatives must only be done with the approval of the Accountable Authority.

### **3.6. Contract Term**

Where contracts are established for a defined period, the period must not exceed five years without the approval of the Accountable Authority on the basis that there are sound technical, commercial or operational reasons for doing so, or that significant benefits will be delivered to the State.

Where a contract is comprised of a project component (where the contractual requirement will remain in effect until it is completed) and a term component (where the contractual requirement will remain in effect for a defined period of time), only the term component of the contract will be considered for the purposes of determining whether it will require approval to exceed a five year term.

### **3.7. Advertising**

Requests for Works procurement must be advertised on Tenders WA wherever there is a requirement for a public advertisement (refer to the *Procurement and Contract Management Policy* as referenced in [Section 3.1](#) of this Policy). The advertising period must be for a minimum of ten working days. Except where the proposed procurement is a Covered Procurement under the FTAs, the Accountable Authority may approve an exemption from the minimum tender advertising period.

### **3.8. Notification to Unsuccessful Tenderers**

Where a written quotation or open tender process has been used, unsuccessful tenderers must be provided with the name and total contract price or total estimated contract price of the successful tenderer. Unsuccessful tenderers must be provided with a debriefing on request.

### **3.9. Publishing Contract Award Information**

Where the awarded contract price for an instance of Works procurement is greater than \$50,000 (GST inclusive), details must be published on Tenders WA after the successful tenderer has been notified. Details for a particular contract do not need to be published where the Accountable Authority considers that the release of those details presents a significant operational risk, such as the potential to compromise security.

# APPENDIX 2 – Value for Money

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## 1. Appendix 2: Value for Money

Health Service Providers must award contracts based on offers assessed as providing the best value for money.

## 2. Preamble

Value for money is the basis for comparing conforming offers so that the optimal offer can be selected. Achieving user requirements, quality standards and service benchmarks, and managing risk, is considered to be more important than obtaining the lowest price.

## 3. Determining Value for Money

Health Service Providers must ensure that their Works procurement activities are aligned with System Manager policies, objectives and strategies and that their activities are consistent with whole of system initiatives.

Achieving best value for money at the individual purchase level requires assessment of cost and non-cost factors, where relevant, to reach a value judgement about the best outcome. The value for money test may vary in complexity depending on the nature of the purchase, ranging from a simple price assessment through to a detailed assessment and comparison of cost and non-cost factors.

Non-cost factors may include, but are not limited to the following:

- (a) fitness for purpose;
- (b) technical and financial issues;
- (c) supplier capability;
- (d) sustainability;
- (e) risk exposures;
- (f) availability of maintenance, service and support;
- (g) compliance with specifications;
- (h) ease of inspection, communication and delivery;
- (i) standardisation and administrative/process efficiencies within a given site; and
- (j) occupational health and safety.

The assessment of cost needs to consider any ongoing costs that may accrue beyond the initial price, including the associated costs of holding, using, maintaining and disposing of the goods, services or assets.

# APPENDIX 3 – Probity and Accountability

## 1. Appendix 3: Probity and Accountability

Health Service Providers must be able to demonstrate to tenderers and the community that they conduct their Works procurement activities with high standards of probity and accountability.

## 2. Preamble

### 2.1. Background

As public officers, adherence to probity and accountability is important, particularly when evaluating tenders and awarding contracts. The community, consultants and contractors must have confidence that the outcomes of Works procurement processes have been arrived at with integrity and via due process.

Procurement practices or any other behaviours including conflict, corruption or those which deny legitimate business opportunities to potential participants are not acceptable.

## 3. Ensuring Probity and Accountability

“Probity” requires that Health Service Providers conduct procurement activities ethically, honestly and fairly. High standards of probity may be demonstrated by:

- (a) articulating and enforcing expected behaviours;
- (b) involving officers in procurement who are skilled, knowledgeable and experienced;
- (c) implementing appropriate checks and balances at various stages in the procurement process;
- (d) articulating to staff involved in Works procurement the concept of conflict of interest and implementing strategies to identify and manage potential issues;
- (e) communicating with tenderers in a consistent manner that does not disadvantage or advantage any tenderer over others;
- (f) making certain that officers are not compromised in their ability to act, or to be seen to act, impartially; and
- (g) securing confidentiality of tenderer information and evaluation processes.

“Accountability” requires that Health Service Providers be able to publicly account for their decisions and take responsibility for the achievement of procurement outcomes. Elements of a procurement culture that promotes and demonstrates a high level of accountability include:

- (a) clearly identifying lines of responsibility for decisions;
- (b) maintaining adequate records to enable external scrutiny of decisions;
- (c) complying with Government, State Supply Commission and System Manager policies;
- (d) publishing contract award details as required; and
- (e) establishing processes that provide unsuccessful tenderers with the opportunity for feedback, and for managing contractor complaints.

**This document can be made available in alternative formats on request for a person with a disability.**

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