



**NSW Department of Premier and Cabinet and
NSW Department of Services, Technology &
Administration**

**PREQUALIFICATION SCHEME: PERFORMANCE AND
MANAGEMENT SERVICES**

GUIDELINES FOR AGENCIES

NOVEMBER 2009

CONTACT DETAILS

The Performance Improvement and Review Branch of the NSW Department of Premier and Cabinet is the contact for matters related to the services to be performed and the skills levels and capacity required under the Scheme. Persons requiring information on these matters should contact:

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This document is available at:
<http://www.nswprocurement.com.au/Consultants/Performance.aspx>

INTRODUCTION

The NSW Department of Premier and Cabinet, in conjunction with the NSW Department of Services, Technology & Administration, have established the *Prequalification Scheme – Performance and Management Services* (the “Scheme”). The Scheme creates a framework for the prequalification of individuals and firms who provide performance and management services to NSW Government agencies and statutory corporations.

The NSW Department of Services, Technology & Administration maintains a list of individuals and companies with a demonstrated track record in one or more of the following capability areas:

- **Performance Reviews** – including reviews of agencies, programs, budgetary and performance targets, management, functions, policies/strategies and legislation and regulation.
- **Infrastructure and Major Projects** – advice and/or assistance regarding strategy and planning, risk, major project procurement and delivery, contracting, communication and project management.
- **Service Delivery Improvement** – advice and/or assistance regarding service strategy and planning, service implementation, service performance and service evaluation.
- **Organisational Capacity** – advice and/or assistance regarding governance and reporting, corporate and business strategy, business process improvement, communication, human resources, financial management, asset management and procurement and office services.

Note: Audit & Assurance Services and Investigation Services - From 1st September 2009 the following two specialties have been included in this category – Audit & Assurance Services and Investigation Services. These two specialties replace those services provided in State Contracts Control Board Period (SCCB) period contract No. 7174 that concluded 31st August 2009.

Panel members of SCCB period contract No. 7174 seeking prequalification for Audit & Assurance Services and Investigation Services must apply for prequalification in accordance with the conditions of this Scheme.

Individuals or companies that already prequalified in a category(s) in the Scheme will also have to apply for prequalification for Audit & Assurance Services and Investigation Services in accordance with the conditions of this Scheme.

- **General Technical Expertise** – advice and/or assistance regarding policy development, business case development, contracts and contracting, project governance and management, issues management, financial and economic analysis, budget management and environmental impact assessment.

These types of services are typically regarded as a ‘consultancy’. The Scheme, however, can be used by agencies regardless of whether service providers are engaged as ‘consultants’ or as ‘contractors’.

A ‘consultant’ is a person or organisation engaged under contract on a temporary basis to provide recommendations or high-level specialist or professional advice to assist decision-making by

management. Generally, it is the advisory nature of the work that differentiates a consultant from a contractor.

Different reporting obligations apply depending on whether service providers are engaged as consultants or contractors. Further guidance on agencies' reporting obligations is set out in more detail below.

The Scheme aims to:

- streamline the competitive tendering process by pre-qualifying service providers with demonstrated track records in the provision of certain performance and management services ;
- enhance probity standards and quality assurance by allowing for third party assessment of service providers.

These guidelines are to assist agencies and statutory corporations seeking to utilise the Scheme and should be read in conjunction with the Scheme Conditions.

What does the Scheme not cover?

The Scheme will not cover areas of procurement already addressed by other prequalification schemes or panel contracts, including:

- State Contracts Control Board (period) contracts;
- Construction-related consultant prequalification schemes; and

A list of other panels and schemes not covered by the Scheme (current as at November 2009) is attached.

How does the Scheme operate?

A list of service providers is maintained by the NSW Department of Services, Technology & Administration and made available to agencies and statutory corporations. Service providers will have expertise in one or more of the five areas covered by the Scheme, namely: Performance Reviews; Infrastructure and Major Projects; Service Delivery Improvement; Organisational Capacity; and General Technical Expertise.

Under the Scheme, the following minimum levels of competition apply:

- Where the estimated cost of a project is less than or equal to \$150,000, an engagement can be made directly from the Scheme by inviting one (1) written quotation from a service provider prequalified under the Scheme.

- Where the estimated cost of a project is more than \$150,000, an engagement can be made from the Scheme by inviting a minimum of three (3) service providers, prequalified under the Scheme, to submit proposals. Open invitations to tender are not required.

The NSW Government *Code of Practice for Procurement* outlines the responsibilities and standards of behaviour expected of agencies involved in procurement activities. Agencies who invite quotes or proposals from service providers must adhere to the standards established by the Code to ensure that procedural fairness is observed during the procurement process.

All NSW Government agencies and statutory corporations may refer work to service providers outside the Scheme in circumstances where they consider specialist advice can be provided more efficiently and effectively. It is noted that agencies who seek to engage consultants outside the Scheme will be required to comply with the Premier's Circular *C2004-17: Guidelines for the Engagement and Use of Consultants*.

Does the Scheme allow for additional or 'flow-on' engagement?

A service provider's engagement may result in the need for related 'flow-on' work. If possible, agencies should anticipate the potential for further engagements and give notice to service providers when they are first invited to submit a proposal.

Whether or not advance notice is given, a service provider who has undertaken an initial engagement may be invited by the agency to submit a proposal for further work, provided the following criteria are met:

- satisfactory performance;
- demonstrated knowledge and expertise developed during the first engagement; and
- value for money for additional related engagements.

The total value of the first and related flow-on engagements is not to exceed the lesser of three times the value of the first engagement or \$500,000. Where flow-on engagements are likely to exceed the applicable limit, a minimum of three service providers from the Scheme should be invited to provide proposals unless exceptional circumstances can be demonstrated.

Successive engagements constitute a form of direct negotiation between an agency and a service provider. For guidance, agencies should refer to the Independent Commission Against Corruption publication, *Direct Negotiations: Guidelines for managing risks in direct negotiations, May 2006*.

On what terms are service providers from the Scheme engaged?

Each matter allocated to a service provider who is a member of the Scheme will be considered a separate and distinct engagement. The engaging agency and the service provider will enter into a separate agreement for each engagement.

A standard form of agreement is set out at Schedule 2 of the Scheme Conditions. Agencies should not modify the terms of the agreement unless there are exceptional circumstances which warrant modification.

What are the record-keeping requirements of the Scheme?

NSW Government agencies will supply to the Department of Services, Technology & Administration the following information for each engagement:

- the name of the service provider;
- the total value of the engagement;
- any variations or flow-on engagements; and
- a brief description of the outcome.

How is performance monitored and reported on?

Quality assurance, value for money, and performance improvement are key objectives of the Scheme.

To help meet these objectives, agencies are required to submit a Performance Report in circumstances where:

- a service provider's performance is considered unsatisfactory; or
- the total cost of the engagement (and any related flow-on engagements) is \$150,000 or more.

A standard form Performance Report is set out at Schedule 3 of the Scheme Conditions. A Performance Report may be submitted at the completion or termination of the relevant engagement, or whenever a critical aspect of performance is unsatisfactory.

Where an agency considers that a service provider's performance has been unsatisfactory, the service provider must be kept informed and afforded an opportunity to show cause as to why it should not be rated 'unsatisfactory'.

Agencies should follow the steps outlined in the Scheme Conditions to ensure that they observe procedural fairness in the course of performance reporting.

Are there any additional reporting requirements?

Additional reporting and disclosure requirements apply to NSW Government agencies who engage service providers under:

- the *Freedom of Information Act 1989* (the “FOI Act”);
- Premier’s Memorandum M2007-01, which introduced the *Guidelines on the Public Disclosure of Information arising from NSW Government Tenders and Contracts*; and
- NSW annual reporting legislation.

Disclosure obligations under the FOI Act and Premier’s Memorandum M2007-01

Under section 15A of the FOI Act, agencies entering into a contract with an estimated value \$150,000 or more (known as a “Class 1 contract”) are required to disclose certain information, including:

- the name and address of the contractor;
- the date on which the contract became effective;
- the duration and particulars of the contract; and
- the estimated amount payable to the contractor.

Additional information is required to be disclosed by agencies entering into Class 2 and Class 3 contracts. Details of what constitutes a Class 2 and Class 3 contract are set out in the guidelines that accompany Premier’s Memorandum M2007-01

Under the FOI Act and Premier’s Memorandum M2007-01, agencies must place the relevant contract information on the government tendering website, <https://tenders.nsw.gov.au>.

Nothing in the FOI Act or Premier’s Memorandum M2007-01 requires the disclosure of:

- the commercial-in-confidence provisions of a contract (this includes the consultant’s financing arrangements, cost structure or profit margins, intellectual property, or any other matter whose disclosure would place the contractor at a substantial commercial disadvantage);
- the details of any unsuccessful tender;
- any matter that could reasonably be expected to affect public safety or security; or
- information which would be exempt from disclosure if it were the subject of an application under the FOI Act.

Detailed information about the disclosure obligations of agencies is set out in the guidelines which accompany Premier’s Memorandum 2007-01. These can be accessed via the NSW Department of Premier and Cabinet’s website, http://www.dpc.nsw.gov.au/publications/memos_and_circulars/ministerial_memoranda/2007/m2007-01.

Disclosure obligations under NSW annual reporting legislation

Annual Reports legislation requires agencies to include the following information concerning the engagement of consultants during the financial year in their Annual Reports:

For consultancies costing equal to or more than \$30,000:

- the name of the consultant;
- the title of the project (shown in a way that identifies the nature of the work); and
- the actual costs of engaging the consultant.

For consultancies costing less than \$30,000:

- the total number of engagements costing less than \$30,000; and
- the total cost of all such engagements.

The Premier's Department Circular *C2004-17: Guidelines for the Engagement and Use of Consultants* defines a consultant as:

"A person or organisation engaged under contract on a temporary basis to provide recommendations or high level specialist or professional advice to assist decision-making by management. Generally it is the advisory nature of the work that differentiates a consultant from other contractors".

The definition does not apply to casual or temporary staff employed or engaged by a NSW government organisation, and is distinct from the definition of 'contractor'. Agencies should refer to the Guidelines for more information on the distinction between 'consultant' and 'contractor'. These can be accessed via the NSW Department of Premier and Cabinet's website, http://www.dpc.nsw.gov.au/publications/memos_and_circulars/circulars/2004/c2004-17

How long will the Scheme operate for?

The Scheme commenced in 2008, for an initial term of two years, concluding on 19 February 2010. The scheme has been extended for a two year period, concluding 19 February 2012. The Scheme will be monitored by the Departments of Premier and Cabinet and DSTA to assess whether the objectives and intent are being met. Modifications may be made at the Departments' discretion during the life of the Scheme.

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PREQUALIFICATION SCHEME: PERFORMANCE AND MANAGEMENT SERVICES

Other panel contracts and prequalification schemes

The Prequalification Scheme will not cover areas of specialist consultant procurement already addressed by other prequalification schemes or panel contracts, including:

1. State Contracts Control Board (period) contracts
2. Construction-related consultant prequalification schemes

Below is a detailed list of services that may be obtained from these contracts and schemes:

1. State Contracts Control Board (period) contracts:

Below is a brief summary of existing SCCB established panels from which it is possible to engage specialist consultants. All of these contracts have been established for use under the Public Sector Management (Goods & Services) Regulation 2000: -

Contract 2020

The establishment of the ICT Services Approved Supplier Panel is a significant part of the Government ICT Strategic Plan, which aims to deliver effective and efficient procurement solutions and savings on products and services across agencies.

31 major ICT Services categories are provided as follows:

1. Analysis and statistics
2. Asset - materials management
3. Business intelligence
4. Collaboration
5. Communication
6. Content management
7. Customer initiated assistance
8. Customer preferences
9. Customer relationship management
10. Data management
11. Development and integration
12. Document management
13. Documentation and Training
14. Financial management
15. Forms management
16. Human capital - workforce management
17. Human resources
18. Knowledge discovery
19. Knowledge management
20. Maintenance & Support
21. Management of processes
22. Organisational management
23. Records management
24. Reporting
25. Search
26. Security management
27. Site Cabling
28. Supply chain management
29. Systems management
30. Testing Services
31. Visualisation

Contract No.2360 - Government Telecommunications Agreements Provides panels of suppliers for telecommunications products and services.

Temporary Staff Contract (c100 Contingent Workforce).

Personnel Categories

- Category A - Administration Personnel (clerical and office support positions)
- Category B - Finance Personnel (including accounting and audit professional)
- Category C - Specialist Personnel
- Category D - Industrial Personnel
- Category E - Professional Personnel

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- Category F - Technical Personnel
- Category G - ICT – Network and Equipment Personnel (PAYG and Contractors)
- Category H - ICT – Management, Implementation and Support Personnel (PAYG and Contractors)
- Category I - ICT - Applications, Databases and Systems Personnel (PAYG and Contractors)

Contract No. 2682 Security Guards Service and Professional Advisory Service (risk management advice-building security).

Advertising services:

Accreditation Scheme for Creative Advertising Agencies Scheme No.150 - Creative Advertising Services. Provides an accreditation scheme designed to reduce duplication of effort and costs incurred by clients and advertising agencies in undertaking similar procurement processes for this service, and enables agencies to engage creative advertising services providers rapidly and as required for urgent campaigns. The scheme offers a full range of creative advertising services including:

- Overall Strategic Campaign Development
- Creative Services
- Media Planning
- Production Capabilities (tv, radio, print, digital advertising)
- Direct Mail

The scheme offers a wide choice of leading Australian and international creative agencies, as well as small specialist agencies. Specialist services such as health, youth, community language, indigenous and below the-line/sales production, are also available.

1. Prequalification Scheme for Construction related Consultant Services

This Scheme was created and is operated by the Department of Services, Technology & Administration (Policy Support Services) with the support of NSW Treasury. The Scheme is to service the needs of agencies carrying out construction work to comply with the requirements of Treasury Circular TC 04/07. Non-Accredited and Accredited agencies are using these panels along with some State Owned Corporations and Local Government Councils that use the NSW Government procurement system for construction. The prequalified consultant categories include:

Cat 335 - Project Director
Cat 336 - Project Director Health
Cat 313 - Project Management
Cat 346 - Economic Appraisal-Health
Cat 328 - Value Management Facilitators
Cat 201 - Architectural-General
Cat 132 - Engineering-Principal Design Consultant
Cat 203 - Architectural-Health
Cat 202 - Architectural-Education Primary & Secondary
Cat 200 - Architectural-Education Tertiary
Cat 204 - Architectural-Correctional
Cat 205 - Architectural-Justice
Cat 219 - Architectural-Heritage
Cat 120 - Electronic Security
Cat 301 - Quantity Surveying
Cat 307 - Environmental Studies
Cat 317 - QA Auditors
Cat 334 - Site Safety Auditors
Cat 337 - Dispute Managers