

Premier and Cabinet Circular

PC 027 – DISCLOSURE OF GOVERNMENT CONTRACTS



Effective from December 2005

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Objective

1. To prescribe a policy applying to all public authorities subject to the *Public Finance and Audit Act 1987* for the public disclosure of certain contracts involving government expenditure and the sale of government assets, and for the management of contract information.
2. To prescribe the process for disclosing contract information on the Internet.

Scope

3. Cabinet has approved that this Circular applies to all public authorities as defined in the *Public Finance and Audit Act 1987*.
4. This Circular describes the obligations on Chief Executives in relation to the Disclosure of Eligible and Significant Contracts, executive contracts and the management of contract information. It does not derogate from any other obligations of the public authority to disclose information.
5. Chief Executives must ensure the disclosure of Eligible and Significant Contracts executed on or after 28 December 2005 as required by this Circular.

Definitions

6. **“Eligible Contracts”**: Contracts between:
 - 6.1. public authorities and the private sector, involving the expenditure of public funds of **\$500,000** or more and less than **\$4,000,000**; and
 - 6.2. public authorities and a Consultant, involving the expenditure of public funds of less than **\$25,000**.

Eligible contracts do not include contracts under the *Public Sector Management Act 1995*.

7. **“Significant Contracts”**: Contracts between:
 - 7.1. public authorities and a Consultant, involving the expenditure of public funds of **\$25,000** or more;
 - 7.2. public authorities and the private sector, involving the provision of industry assistance of **\$200,000** or more;
 - 7.3. public authorities and the private sector, involving the expenditure of public funds of **\$4,000,000** or more; and
 - 7.4. public authorities and the private sector, involving asset sales of **\$1,000,000** or more.
8. All the threshold amounts listed in clauses 6 and 7 are inclusive of GST.

9. Expenditure of public funds referred to in clauses 6 and 7 relates to the payment of monies by a public authority to the private sector entity or consultant and includes the payment of fees, expenses and other payments set out in the contract but does not include the value of any 'in kind' contributions by a public authority.
10. Where the value of an Eligible or a Significant Contract is initially less than the threshold amounts shown in clauses 6 and 7, but the value subsequently increases, causing the value of the contract to become equal to or greater than the relevant threshold amount, the contract becomes an Eligible Contract or a Significant Contract and is subject to disclosure accordingly.
11. **“Consultant”**: A person or entity that is engaged by a public authority for a specified period to carry out a task that requires specialist skills and knowledge not available in the public authority. The objectives of the task will be achieved by the consultant free from direction by the public authority as to the way it is performed and in circumstances in which the engagement of a person under normal circumstances is not a feasible alternative.¹
12. **“Disclosure”**: Publication on the South Australian Government’s Tenders and Contracts website <http://www.tenders.sa.gov.au/> - [Contract Form](#) as follows:
 - for Eligible Contracts, the information listed in clause 17, and
 - for Significant Contracts, the information listed in clause 17 as well as a pdf version of the entire contract. In cases where parts of the contract are not available electronically, these parts of the contract can be disclosed separately on request.
13. **“Industry Assistance”**: A contract under which Government undertakes to provide any form of financial or other assistance on terms and conditions requiring that the assistance be expended or used by the recipient for a nominated purpose related to the establishment, expansion or operation of a business or industry in the State, and which is expected to deliver economic benefits to the State. The form of the assistance may include a grant, loan, subsidy, taxation relief, guarantee or the provision of premises or facilities.
14. **“The Act”**: *Freedom of Information Act 1991* as amended.
15. **“Accredited Freedom of Information Officer”**: Officer of the contracting public authority with responsibility for dealing with applications for information under the Act.

¹ This definition is consistent with the definition of a consultant included in the Department of Treasury and Finance Accounting Policy Framework II *General Purpose Financial Reporting Framework*

Policy

16. Chief Executives must ensure the disclosure of information in relation to Significant Contracts and Eligible Contracts as set out in clause 12, subject to exemption provisions contained in clause 22.

Information to be disclosed

17. The information to be disclosed about each contract is:
- Contract title
 - Full details of the contractor including name, address, phone number and contact officer
 - Name of the public authority
 - Date of the contract's execution
 - Start date and completion date of the contract
 - Goods, services or subject matter of the contract
 - Total value of the contract • Procurement process used to select the contractor
 - Contract identification number
 - Summary information relating to any variations over the term of the contract
 - Reasons for non-disclosure of part or all of the contract (if applicable)
 - Contact details for the public authority's Accredited Freedom of Information Officer
 - For Significant Contracts, the entire contract.

Where the contract has an initial term and an option to extend the contract, the information to be disclosed about the total value and completion date of the Eligible Contract should be appropriate to the nature of the contract. Where there has been no decision to exercise the option to extend the contract, the information to be disclosed may relate to the initial term of the contract. Where there has been a decision to extend the contract, the information disclosed about the Eligible Contract in accordance with clause 17 must be updated to include the period of the extension.

Timing

18. Disclosure must occur within 60 days of the Eligible or Significant Contract being executed. The information should remain on the website for the term of the contract or twelve months, whichever is longer.

Additional access

19. Subject to the exemptions provided in this Circular, an Eligible Contract is available in its entirety on request. Members of the public wishing to review an Eligible Contract in its entirety should write to the public authority's Accredited Freedom of Information Officer.
20. The Act will remain as a mechanism for access to contractual information should a member of the public believe that the disclosure requirements of this Circular have not been adhered to.

Executive Contracts

21. Copies of executive contracts will be made available for inspection on receipt of a written request to the Chief Executive of the public authority in which the executive is employed. In the case of contracts with Chief Executives, the written request must be made to the Commissioner for Public Employment and the contract provided will include the Total Remuneration Package Value (TRPV) and the schedule in which the TRPV appears, though this information will not be included in the case of other executive contracts. In all cases, the address of the executive will be excluded for privacy reasons.

Exemption from disclosure

22. A Chief Executive may decide not to disclose part of an Eligible or a Significant Contract, provided that there are compelling reasons why the material should not be made public and one or more of the following cases apply:
 - 22.1. Genuinely confidential business information – where it can be clearly demonstrated that a party or other person would gain a commercial advantage or be disadvantaged by the disclosure of such information.
 - 22.2. Trade Secrets/Intellectual Property – where the release of such information would prejudice a party.
 - 22.3. Defence and National Security information – matters affecting public safety or matters affecting security of government facilities.
 - 22.4. Public interest – where it can be demonstrated that a person or a group of persons could be seriously harmed either socially or economically from the release of such information.
 - 22.5. Legal risk – where disclosure would:
 - 22.5.1. be contrary to the provisions of an Act;
 - 22.5.2. found an action for breach of confidence;
 - 22.5.3. be a breach of contract; or

22.5.4. be contrary to an order of a court.

23. In considering exemptions, a Chief Executive must make any assessments from the initial starting point that a contract should be released in full.
24. Where the Chief Executive decides not to disclose information as referred to above, the reason why the disclosure is not made must be published on the South Australian Government's Tenders and Contracts website.

Management of Contract Information

25. Chief Executives are responsible for ensuring that public authorities have in place adequate systems to manage all contracts. This includes ensuring the safe storage and easy retrieval of all contracts and the maintenance of contract registers.

Advice to potential contracting parties

26. Chief Executives are responsible for ensuring that public authorities inform private sector parties that may potentially be required to enter into a contract with a public authority of the disclosure requirements of this Circular, in writing, at the commencement of the procurement process.

Document Control

Review number: 1
Review date: September 2021

Date of approval: December 2005
Next review date: September 2022

For more information

Procurement Services SA
Department of Treasury and Finance
T: 8226 2862

E: procurement@sa.gov.au

W: dpc.sa.gov.au/resources-and-publications/premier-and-cabinet-circulars