NSW Government

Procurement Policy Framework

NSW GOVERNMENT

Procurement Policy Framework

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Introduction

NSW government agencies spent around $34 billion on goods, services and construction in 2018-19, with spend increasing by an average $2.7 billion per annum over the past five years. Alongside this increasing procurement expenditure, the NSW Government has committed $87.2 billion over the next four years for critical infrastructure.

To ensure this money is spent fairly and efficiently, and for the long-term benefit of everyone in NSW, government buyers must comply with a range of legislative and policy requirements.

Using the framework

The NSW Procurement Policy Framework provides a consolidated view of government procurement objectives and the Procurement Board's requirements as they apply to each step of the procurement process.

NSW Procurement Policy Framework is a "policy" for the purposes of s.176(1)(a) of the *Public Works and Procurement Act 1912*. Government agencies, as defined in s.162 of the Act, must comply with the mandatory parts of this document.

Procurement has a broad end-to-end definition from 'needs identification' to 'contracting and placing orders', managing contracts and supplier relationships and disposing of government assets.

The framework applies to the procurement of goods and services of any kind including construction. For clarity, the framework identifies the requirements that apply to all procurement, to *construction* procurement, or to goods and services procurement.

The term '**must**' denotes mandatory rules based on requirements embedded in legislation, government policy and Procurement Board Directions and policies.

The terms '**should**', '**may**' and '**recommended**' indicate good practice with supporting documents categorised as guidance.

All dollar values and thresholds are **exclusive of GST** and **contract value** means the total estimated spend over the life of the contract, unless otherwise specified.

Terms in *italics* are defined in the Glossary at the end of the framework.

Who is this document for?

This document is for everyone who buys goods or services including construction on behalf of NSW Government as well as policy makers of all levels. Agencies should ensure that their internal policies and controls are consistent with any obligations under this Framework.

What's new as at 1 July 2020

1 The new NSW government procurement website, buy.nsw, went live in April 2020. All references and links have been updated.

2 PBD 2020-01 Support for bushfire affected communities was amended 4 May 2020 to include support for flood-affected communities. Requirements have been updated in Section 2:01 Plan, p. 39.

3 PBD 2020-02 Use of Procure IT Framework and increase of the threshold in Core& Contracts came into effect 1 June 2020, replacing PBD 2018-02. References have been amended throughout the document.

4 PBD 2020-03 Skills, training and diversity in construction came into effect 1 July 2020, replacing PBD 2017-05 Construction training and skills development. Construction procurement requirements have been updated:

- Section 1:05 Economic development, social outcomes and sustainability, pp. 25-26
- Section 2:01 Plan: Creating a new procurement arrangement, p. 48
- Section 2:02 Source: Additional evaluation criteria, pp. 65-66
- Section 2:02 Source: Contract requirements, p. 70
- Section 2:03 Manage: Additional requirements for construction contracts, p. 100.

5 Amended references to the "SME or Regional First" initiative in the *SME and Regional Procurement Policy* to reflect changes made January 2020 that provide additional support for drought-impacted regional businesses, Section 2:01 Plan, p. 41.

6 Added information on engaging social enterprises:

- Section 1:05 Economic development, social outcomes and sustainability, p. 25
- Section 2:02 Source: Additional evaluation criteria, p. 64
- Glossary, p. 121.

7 Updated references and links to the revised *Infrastructure Investor Assurance Framework* released February 2020 by Infrastructure NSW.

Key to icons

The following icons are used to identify different content types:

Mandatory items – you must comply with these requirements

Recommended items – you are encouraged to apply these provisions

Applies to goods and services (non-construction) procurement, including ICT

Applies to construction procurement

Applies to ICT procurement only

Applies to human services (non-government organisation (NGO)) procurement only

Additional information

8 Added references to ICAC guideline, *Supplier due diligence: a guide for NSW public sector agencies* released June 2020:

- Section 1:02 Fair and open competition, p.11
- Section 2:02 Source: Tender documentation, p.57
- Section 2:03 Manage: Contract and supplier management, p.96.

9 The Department of Customer Service archived DFSI Circular 2015-02 Efficient Electronic Payment Methods on 30 March 2020. Requirements relating to electronic supplier payments (p.15 and p.96) have been removed.

Foundation legislation and policies

The *Public Works and Procurement Act 1912* (PWP Act) provides the legislative framework for procurement for NSW government agencies.

The PWP Act establishes the NSW Procurement Board, its objectives and functions and defines the procurement obligations of government agencies.

NSW Government agencies must comply with a range of procurement-related requirements including:

- The PWP Act, *Government Sector Finance Act 2018, Independent Commission Against Corruption Act 1988, Government Information (Public Access) Act 2009* and other legislation
- NSW Government policy
- NSW Procurement Board Directions and policies
- Premier's Memoranda
- Treasurer's Directions.

Agency responsibilities

NSW Government procurement operates within a devolved governance structure. The heads of government agencies are ultimately responsible for managing their agency's procurement in compliance with procurement law and government policy and entering into contracts on behalf of their agency. If the Procurement Board allocates responsibility for a whole-of-government category or agreement to an agency, the agency head is also responsible for entering into those agreements on behalf of the whole-of-government.

It is critical to the governance of agency procurement that clusters or agencies appoint a Chief Procurement Officer.

Accreditation

An agency's authority to procure differs according to the terms of its accreditation by the Procurement Board under section 174 of the PWP Act. Further information on the goods and services and construction accreditation schemes is in Section 3.2.

Compliance

The PWP Act and the Procurement Board's policies and directions apply to all government agencies, excluding state-owned corporations and local councils, as defined in s.162 of the Act. The Act and the Procurement Board's policies also apply to agencies that undertake procurement to fulfil statutory functions or have other statutory powers to undertake procurement.

Agencies **must** regularly test their compliance with the mandatory requirements of this framework and other Procurement Board policies and directions. For accredited agencies this will inform the annual self-assessment attestation.

References

Type	Reference	Status	Category		Value	Plan	Source	Manage
Legislation	*Public Works and Procurement Act 1912*	Mandatory	Goods and services	Construction	Any	✓	✓	✓
Legislation	*Public Works and Procurement Regulation 2019*	Mandatory	Goods and services	Construction	Any	✓	✓	✓
Legislation	Government Sector Finance Act 2018	Mandatory	Goods and services	Construction	Any	✓	✓	✓
Legislation	Independent Commission Against Corruption Act 1988	Mandatory	Goods and services	Construction	Any	✓	✓	✓
Legislation	Government Information (Public Access) Act 2009	Mandatory	Goods and services	Construction	≥$150,000 (inc GST)		✓	
Policy	Accreditation program for goods and services procurement	Recommended	Goods and services		Any	✓	✓	✓
Policy	Agency accreditation scheme for construction (for accreditations granted before September 2015)	Recommended		Construction	Any	✓	✓	✓
Policy	Agency accreditation scheme for procurement (for accreditations granted after September 2015)	Recommended		Construction	Any	✓	✓	✓

Table 1 References: Foundation legislation and policy

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Key: Mandatory | Recommended | Goods and services | Construction | ICT | Human services | Additional information

Section 1

• OBJECTIVES •

Value for money

Fair and open competition

Easy to do business

Innovation

Economic development, social outcomes and sustainability

Value for money

The overarching consideration for government procurement is ensuring best value for money in the procurement of goods, services and construction.

Value for money is not necessarily the lowest price, nor the highest quality good or service. It requires a balanced assessment of a range of financial and non-financial factors, such as: quality, cost, fitness for purpose, capability, capacity, risk, total cost of ownership or other relevant factors.

References

Type	Reference	Status	Category		Value	Plan	Source	Manage
Legislation	*Public Works and Procurement Act 1912*	Mandatory	Goods and services	Construction	Any	✓	✓	✓
Legislation	*Government Sector Finance Act 2018*	Mandatory	Goods and services	Construction	Any	✓	✓	✓
Policy	TPP18-06 NSW Government Business Case Guidelines	Mandatory	Goods and services	Construction	Risk based	✓		
Policy	TPP17-03 NSW Government Guide to Cost Benefit Analysis	Mandatory	Goods and services	Construction	Risk based	✓	✓	✓
Guidance	Value for money	Recommended	Goods and services	Construction	Any	✓	✓	✓
Guidance	Market approaches guide	Recommended	Goods and services	Construction	Any	✓	✓	✓
Guidance	Benefits realisation framework	Recommended	Goods and services	Construction	Any	✓	✓	✓

Table 2 References: Value for money

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Key: Mandatory | Recommended | Goods and services | Construction | ICT | Human services | Additional information

Fair and open competition

Fair and open competition improves outcomes for NSW by broadening access to government procurement, especially for SMEs and regional businesses.

Transparent, competitive processes build trust in government procurement practices and decisions, drive fair and ethical behaviour, safeguard probity and foster healthy working relationships between government buyers and suppliers. Competition produces tangible outcomes such as cost savings, increased quality and innovation and supports market sustainability.

Relating to	Status	Category		Value	Obligation	Reference
Fair and open competition				Any	You **must** treat potential suppliers equitably and not discriminate based on business size, location or ownership, except where targeted policy *measures* or *preferences* apply (e.g. SME and Regional Procurement Policy).	Promoting competition
				≥$657,000	You **must not** discriminate against suppliers due to their foreign affiliation or ownership, or the origin of their goods or services, for procurements covered by *enforceable procurement provisions.*	PBD-2019-05 Enforceable Procurement Provisions
				≥$9.2 million		
				Any	You **should** assess the impact of contract terms and extensions on market competition, including how they will limit new suppliers from doing business with government.	
Probity and fairness				Any	You **must** ensure procurement is fair, ethical, transparent and probity rich and ensure that probity is routinely considered in procurement decisions.	*Independent Commission Against Corruption Act 1988*
				Any	You **must** safeguard confidential supplier information and treat tenders and business information fairly, impartially and securely.	
				Any	You **should not** use probity as a 'road-block' or to ignore innovative procurement arrangements with suppliers.	

Relating to	Status	Category		Value	Obligation	Reference
Supplier conduct				Any	You **must** require suppliers to comply with relevant standards of behaviour and use reasonable endeavours to be aware of any adverse findings against current or prospective suppliers.	PBD-2017-07 Conduct by Suppliers
				Any	The Supplier Code of Conduct documents the minimum expectations and behaviours for doing business with NSW Government. Your agency can build upon the code to hold suppliers to more stringent requirements where appropriate.	Supplier Code of Conduct
Supplier due diligence				Any	You **should** conduct supplier due diligence checks, in line with the value, nature and risk profile of the procurement and resulting contract. Due diligence processes are primarily conducted during the sourcing stage. However, contract management also involves the ongoing monitoring of supplier compliance with contractual, regulatory and other obligations.	Supplier due diligence: a guide for NSW public sector agencies
Transparency				Any	You **must** keep appropriate records of procurement planning, management and decision making.	*State Records Act 1998*
				≥$150,000 (inc GST)	You **must** comply with the contract disclosure and open access information requirements of the GIPA Act including formal requests to access government information, subject to the public interest provisions in the act.	*Government Information (Public Access) Act 2009 (GIPA Act)*
				Any	You **should** proactively share information on procurement processes and decision-making, including publishing procurement policies and supplier briefings that explain the reasons for sourcing strategies and outcomes.	

Table 3: Fair and open competition

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References

Type	Reference	Status	Category		Value	Plan	Source	Manage
Legislation	*Government Information (Public Access) Act 2009*	✓	✓	✓	≥$150,000 (inc GST)		✓	
Legislation	*Government Sector Finance Act 2018*	✓	✓	✓	Any	✓	✓	✓
Legislation	*Independent Commission Against Corruption Act 1988*	✓	✓	✓	Any	✓	✓	✓
Legislation	*State Records Act 1998*	✓	✓	✓	Any	✓	✓	✓
Policy	NSW Industrial Relations Guidelines: Building and Construction Procurement	✓		✓	Any		✓	✓
Policy	PBD 2017-07 Conduct by Suppliers	✓	✓	✓	Any	✓	✓	✓
Policy	PBD-2019-05 Enforceable Procurement Provisions	✓	✓	✓	≥$657,000 ≥$9.2 million	✓	✓	
Policy	Supplier code of conduct	✓	✓	✓	Any	✓	✓	✓
Guidance	Controlling corruption opportunities in the provision of maintenance services	☆	✓		Any	✓	✓	✓
Guidance	Corruption and integrity in the NSW public sector: an assessment of current trends and events	☆	✓	✓	Any	✓	✓	✓
Guidance	Corruption prevention, fairness and probity	☆	✓	✓	Any	✓	✓	✓
Guidance	Corruption risks in NSW Government procurement – Recommendations to government	☆	✓	✓	Any	✓	✓	✓
Guidance	Corruption risks in NSW Government procurement – Suppliers' perception of corruption	☆	✓	✓	Any	✓	✓	✓
Guidance	Corruption risks in NSW Government procurement – The management challenge	☆	✓	✓	Any	✓	✓	✓

References

Type	Reference	Status	Category		Value	Plan	Source	Manage
Guidance	Direct Negotiations: Guidelines for managing risks	☆	🛒	👷	Any	✓	✓	✓
Guidance	Free trade agreements	☆	🛒	👷	≥$657,000 ≥$9.2 million	✓	✓	
Guidance	Funding NGO delivery of human services in NSW: A period of transition	☆	🤲		Any	✓	✓	✓
Guidance	Complaint management guidelines	☆	🛒	👷	Any	✓	✓	✓
Guidance	Identifying and managing conflicts of interest in the public sector	☆	🛒	👷	Any	✓	✓	✓
Guidance	Managing IT contractors, improving IT outcomes	☆	🖱		Any	✓	✓	✓
Guidance	Promoting competition	☆	🛒	👷	Any	✓	✓	✓
Guidance	Supplier due diligence: a guide for NSW public sector agencies	☆	🛒	👷	Any	✓	✓	✓

Table 4 References: Fair and open competition

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Key Mandatory Recommended Goods and services Construction ICT Human services Additional information

Easy to do business

NSW aims to be the easiest state to start and stay in business.

Making government procurement simpler, easier and more efficient saves time and money for both agencies and businesses. Streamlined and accessible processes lower barriers to participation and expand opportunities to a broad supply base, especially small and medium businesses.

Relating to	Status	Category	Value	Obligation	Reference
Notifying suppliers of business opportunities			Any	You **must** advertise open tenders electronically on NSW eTendering. Print advertising may only be used in exceptional circumstances where electronic advertising will not meet the agency's needs. In these cases, eTendering must still also be used to, at a minimum, notify the market of the tender.	www.tenders.nsw.gov.au M2011-16 NSW Government Tenders advertised on eTendering only PBD-2019-05 Enforceable Procurement Provisions
			Any	You **should** provide as much notice as possible of upcoming procurement opportunities.	
			Any	You **must** ensure tender periods give respondents reasonable time to effectively price and prepare their submissions or bids.	
Contracts and prequalification schemes			Any	Mandated contracts **must** be used for ICT (Procure IT framework) and *human services procurements*.	PBD-2020-02 Procure IT Framework PBD-2017-04 Procuring Human Services from NGOs
			>$1.3 million	Unaccredited and partially accredited agencies must use the guidelines and contract templates on buy.nsw for construction works valued over $1.3 million. (Refer Section 2:02 Source, Contract requirements).	PBD 2014-03C Threshold for Unaccredited Work
			Any	Procurements using whole-of-government arrangements, e.g. standing offers and prequalification schemes, **must** use the designated customer contract for those arrangements.	

Relating to	Status	Category		Value	Obligation	Reference
Contracts and prequalification schemes				Any	Agencies **should** use standard tender and contract templates with uniform terms and conditions across the agency, to make it easier for potential suppliers to familiarise themselves with contract requirements.	
				Any	You **should** use plain English and limit contract length and complexity.	
				Any	You **should** apply the Procurement Board's recommended commercial approaches to key contract terms except where individual circumstances and/or value for money considerations require otherwise.	Commercial approaches in contracts
				Any	You **should** minimise insurances and indemnities imposed on suppliers, with risk allocated to the party best placed to mitigate or manage those risks.	
				Any	You **should** identify opportunities to establish prequalification schemes in place of panel contracts and standing offers, so that new suppliers are not locked out of government business opportunities for long periods.	
Supplier payments				Any	You **must** pay registered *small businesses* (< 20 FTEs) within 5 business days of receipt of a correctly rendered invoice for payments of $10,000 – $1 million, unless an existing contract or standing offer provides for an alternative time period.	Faster Payment Terms Policy
				Any	You **should** pay suppliers within contractual timeframes, noting your agency must report on payment performance in its annual report.	

Relating to	Status	Category		Value	Obligation	Reference
Purchasing exemptions				Any	You **may** use purchasing exemptions to procure goods and services directly from certain suppliers, subject to your agency's safety, security or infrastructure requirements, even if the goods or services are available on whole-of-government arrangements. Refer Section 2: 01 Plan, Exemptions for details.	SME and Regional Procurement Policy Aboriginal Procurement Policy Aboriginal Participation in Construction Policy *Public Works and Procurement Regulation 2019*
Bid cost contributions				>$100 million	Agencies **may** consider contributing up to 50% of expected bid costs to eligible unsuccessful bidders for construction projects with an estimated total capital cost over $100 million. You **should** identify the need and rationale for a bid cost contribution in the project's Final Business Case, and the proposed contribution **should** be included in the total project funding envelope presented to ERC or Cabinet for approval prior to commencing the procurement process. You **should** seek Treasury's agreement that conditions of the Bid Cost Contributions policy are met before releasing an Expression of Interest, if you wish to pay bid cost contributions.	NSW Bid Cost Contributions Policy

Table 5: Easy to do business

References

Type	Reference	Status	Category		Value	Plan	Source	Manage
Legislation	*Building and Construction Industry Security of Payment Act 1999*	✓		✓	Any			✓
Legislation	*Public Works and Procurement Regulation 2019*	✓	✓	✓	Any	✓	✓	✓
Policy	Aboriginal Participation in Construction Policy	✓		✓	<$250,000 >$1 million	✓	✓	✓
Policy	Aboriginal Procurement Policy	✓	✓		<$250,000 >$10 million	✓	✓	✓
Policy	NSW Bid Cost Contributions Policy	✓		✓	>$100 million	✓	✓	✓
Policy	Faster Payment Terms Policy	✓	✓	✓	<$1 million			✓
Policy	PBD 2014-03C Threshold for Unaccredited Work	✓		✓	>$1.3 million	✓	✓	✓
Policy	PBD 2017-03 Civil Liability Act 2002 and Proportionate Liability	✓		✓	Any		✓	
Policy	PBD-2017-04 Procuring Human Services from NGOs	✓	✓		Any		✓	
Policy	PBD-2020-02 Use of Procure IT Framework and increase of the threshold in Core& Contracts	✓	✓		Any		✓	
Policy	PBD-2019-05 Enforceable Procurement Provisions	✓	✓	✓	≥$657,000 ≥$9.2 million	✓	✓	
Policy	SME and Regional Procurement Policy	✓	✓		<$50,000 <$250,000 <$1 million >$3 million	✓	✓	✓

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Key: Mandatory | Recommended | Goods and services | Construction | ICT | Human services | Additional information

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Type	Reference	Status	Category		Value	Plan	Source	Manage
Guidance	Approaching the Supplier Market				Any			
Guidance	Commercial Approaches in Contracts				Any			
Guidance	NSW Treasury – Business in NSW				Any			
Guidance	Industry Engagement Guide				Any			
Templates	Procure IT Framework				Any			
Templates	NSW Human Services Agreement				Any			
Templates	Goods and services contract templates				Any			
Templates	Construction contract templates - Accredited agencies				Any			
Templates	Construction contract templates – Unaccredited and partially accredited agencies				>$1.3 million			

Table 6 References: Easy to do business

NSW
Transport

Innovation

The marketplace is a great source of innovation and can assist government to work smarter and deliver better services.

Industry engagement and flexible procurement practices assist agencies to adopt innovative services and solutions and support supplier innovation in government's supply chains.

Innovation can be encouraged at three levels of market engagement:

- *at the state economic level* – through effective, early, structured, and open communication of needs to the market
- *at the sourcing level* – by adapting sourcing methods to facilitate innovation and collaboration
- *at the contract management level* – by focusing on outcomes and developing supplier relationships that deliver value beyond the contract.

Relating to	Status	Category	Value	Obligation	Reference
Testing new ideas	☆	🛒	<$1 million	You **may** test the capability of new solutions to meet your current or emerging business needs through innovative collaborations or outcomes-based trials.	SME and Regional Procurement Policy
	☆	👷	<$1 million		PBD-2019-03 Construction procurement opportunities for SMEs
	☆	🖱	Any		Digital.nsw accelerator
	☆	🛒	Any		NSW Innovation Strategy
Engaging with industry	☆	🛒	Any	You **should** engage with industry through all phases of the procurement lifecycle, noting there are increased opportunities for innovation if industry engagement takes place as early as possible.	Industry Engagement Guide

Relating to	Status	Category		Value	Obligation	Reference
Engaging with industry				Any	You **may** consider complex market engagements to pursue innovative procurement outcomes, subject to complying with legislative and policy requirements including the EPP Direction.	Complex Market Engagement Methods
				Any	You **must** refer *unsolicited proposals* to the Department of Premier and Cabinet for assessment, noting such proposals are not a substitute for routine competitive procurement actions. An *unsolicited proposal* is an approach to government from a proponent over a commercial proposition, where the government has not requested the proposal (refer Glossary for more). The focus of *unsolicited proposals* is on unique and innovative projects or services, with the proposal and proponent to be uniquely able to deliver the proposed service.	C2017-05 Unsolicited Proposals Unsolicited Proposals: Guide for Submission and Assessment
				Any	You **may** consider a commissioning and contestability approach to pursue innovative, customer centric approaches to service delivery.	TPP16-05 Commissioning and Contestability Policy
Interactive tendering				Any	You **may** use interactive tendering processes to provide prospective suppliers with information and feedback during a procurement project. Confidentiality and probity must be maintained, including using a probity adviser to observe and guide the process, whenever interactives are used.	Interactive Tendering Guidelines
Construction				Any	You **should** refer to the CILF practice notes as guidance when procuring and delivering major infrastructure projects. The CILF notes provide strategies to address key challenges affecting the construction sector.	Construction Industry Leadership Forum (CILF) Practice Notes
Engaging with the human services sector				Any	You **must** use the NGO Registration Scheme – Human Services as a first step to sourcing information from NGOs that are seeking, or are contracted, to deliver human services on behalf of the NSW Government.	PBD-2016-04 NGO Registration Scheme

Table 7: Innovation

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Type	Reference	Status	Category		Value	Plan	Source	Manage
Policy	C2017-05 Unsolicited proposals Unsolicited Proposals: Guide for submission and assessment				Any		✓	
Policy	PBD-2016-04 NGO Registration Scheme				Any	✓		
Policy	PBD-2017-04 Procuring Human Services from NGOs				Any		✓	
Policy	PBD-2019-03 Access to Government Construction Procurement Opportunities by SMEs: Procurement innovation stream				<$1 million	✓	✓	✓
Policy	SME and Regional Procurement Policy: Procurement innovation stream				<$1 million	✓	✓	✓
Policy	TPP16-05 Commissioning and Contestability Policy				Any	✓	✓	✓
Guidance	Complex Market Engagement Methods				Any	✓	✓	
Guidance	Construction Industry Leadership Forum (CILF) Practice Notes				Any	✓	✓	✓
Guidance	Digital.nsw accelerator				Any	✓	✓	
Guidance	Guidelines for Engagement with NSW Human Services NGOs				Any	✓	✓	✓
Guidance	Human Services Outcomes Framework				Any	✓	✓	✓
Guidance	Industry Engagement Guide				Any	✓	✓	✓
Guidance	Interactive Tendering Guidelines				Any	✓	✓	

References

Type	Reference	Status	Category		Value	Plan	Source	Manage
Guidance	Market and Industry Engagement	☆	🛒	👷	Any	✓		
Guidance	Market Approaches Guide	☆	🛒	👷	Any	✓	✓	
Guidance	NSW Government Action Plan: A ten point commitment to the construction sector	☆		👷	Any	✓	✓	✓
Guidance	NSW Innovation Strategy	☆	🛒	👷	Any	✓	✓	✓
Guidance	Supplier Relationship Management Guidelines	☆	🛒	👷	Any			✓

Table 8 References: Innovation

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Economic development, social outcomes and sustainability

Government procurement can help to support economic participation, social outcomes, develop skills and create jobs for the citizens of NSW.

By building a diverse supply base, government agencies can support businesses of all types to grow and encourage economic development across the state.

The government uses procurement to support *small and medium sized businesses, Aboriginal-owned businesses, regional businesses, disability employment organisations* and *social enterprises.* It is also using its substantial infrastructure investments to support jobs and skills development for a range of workers including Aboriginal people, apprentices and young people aged under 25 years.

Sustainable procurement focuses on spending public money efficiently, economically and ethically to deliver value for money on a whole of life basis. *Sustainable procurement* extends the assessment of value for money beyond the sourcing process, considering benefits and risks to the organisation, the community, the economy and impacts on the environment.

Sustainable procurement:

- Considers how procurement impacts society, the economy and the environment
- Provides all suppliers with full and fair opportunities to compete
- Respects stakeholders' interests, the rule of law and human rights
- Seeks innovative solutions to address sustainability throughout the supply chain
- Buys only what is needed or seek sustainable alternatives
- Analyses all procurement costs, including benefits for society, environment and the economy
- Integrates sustainability into procurement practices.

Relating to	Status	Category	Value	Obligation	Reference
SME and regional businesses			<$50,000 <$250,000 <$1 million >$3 million	You **must** comply with the SME and Regional Procurement Policy to support the participation of *SMEs* and *regional businesses* in goods and services procurement.	SME and Regional Procurement Policy
Employment of Aboriginal people			<$250,000 >$1 million >$10 million	You **must** comply with the Aboriginal Procurement Policy and Aboriginal Participation in Construction Policy, to support 3,000 FTE employment opportunities for Aboriginal people by 2021 through government procurement activities.	Aboriginal Procurement Policy Aboriginal Participation in Construction
Employment of people with a disability			Any	You **may** purchase goods and services of any value from an approved *disability employment organisation* via a single written quote, even if there is a whole of government arrangement in place.	*Public Works and Procurement Regulation 2019* (PWP Regulation)
Social enterprises			Any	You are **encouraged** to procure from *social enterprises* to support economic and social change for disadvantaged people. Social enterprises may be small businesses, SMEs, Aboriginal owned businesses or Australian Disability Enterprises, and if so qualify for the purchasing preferences and initiatives under the SME and Regional Procurement Policy, Aboriginal Procurement Policy, Aboriginal Participation in Construction policy or PWP Regulation.	SME and Regional Procurement Policy *Public Works and Procurement Regulation 2019* (PWP Regulation) Aboriginal Procurement Policy Aboriginal Participation in Construction
			Any	*Social enterprises* are businesses that trade to intentionally tackle social problems, improve communities, provide people access to employment and training, or help the environment. Procuring though social enterprises represents significant opportunity for social enterprise growth, and social change for disadvantaged Australians.	

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Key Mandatory Recommended Goods and services Construction ICT Human services Additional information

05 Economic, social and sustainable procurement outcomes

Relating to	Status	Category	Value	Obligation	Reference
Skills, training and diversity in construction			<$10 million	You, and any contractors you engage, are expected to commit to supporting skills development on construction projects.	PBD 2020-03 Skills, training and diversity in construction
			$10 million – $100 million	You **must:** • embed an apprenticeship target of 20% of the trades workforce on the project • include the target in contract requirements and tender documentation, including quarterly reporting on progress in achieving the target • provide quarterly reports to Training Services NSW in the Department of Education against agreed targets. You **may** also adopt the additional Infrastructure Skills Legacy Program (ISLP) targets that apply to contracts over $100 million.	
			>$100 million	You **must** meet all construction skills requirements for projects valued over $10 million, and apply the following minimum ISLP targets for major construction projects: • 20% of the total labour force of a project to be made up of learning workers • 20% of all trades positions to be made up of apprentices • double the number of women in trade-related work (up from the NSW average of 1% to 2%) • 8% of total project workforce aged less than 25 years You **must** also report the employment and training outcomes for people from the local region (as defined in the contract).	

Relating to	Status	Category		Value	Obligation	Reference
Resource efficiency and waste reduction				Any	You **must** comply with the Government Resource Efficiency Policy (GREP) by ensuring goods, services and construction projects meet minimum energy, water use and air emissions standards. An exception applies for agencies with fewer than 100 employees, when compliance is voluntary.	NSW Government Resource Efficiency Policy (GREP)
				Any	You **should** purchase construction materials with recycled content; copy, stationery and print publication paper with post-consumer recycled content, and non-recycled paper from sustainable sources. Refer to the GREP for information on recognised standards and certification programs for recycled content and sustainable sources.	
				Any	You **must** use E10 and biodiesel blends where possible, unless there is a clear operational requirement that precludes the use of biofuels.	M2012-08 Use of Biofuels
				Any	You **should** consider the product lifecycle when conducting needs analysis and developing product specifications, including taking account of *circular economy* principles, so that use of recycled materials and disposal or repurposing of goods or assets is planned into the procurement process.	NSW Circular Economy Policy Statement
Construction and demolition waste management				Any	To the extent they relate to construction procurement: • You **must** comply with the *Protection of the Environment Operations Act 1997*. • If you are disposing of construction waste, the construction and demolition waste facility **must** comply with the Standards for Managing Construction Waste in NSW.	*Protection of the Environment Operations Act 1997* Standards for Managing Construction Waste in NSW
				Any	You **should** refer to the Construction and Demolition Waste Management Toolkit prepared by the Environmental Protection Authority (EPA) for guidance on engaging contractors and working on contracts that involve construction and demolition.	Construction and Demolition Waste: a Management Toolkit
				Any	Unlawful waste disposal or fraudulent behaviour by contractors and subcontractor creates the potential for significant reputation damage, financial penalty and criminal conviction.	

Table 9: Economic, social and sustainable procurement outcomes

Contents

Key: Mandatory | Recommended | Goods and services | Construction | ICT | Human services | Additional information

References

Type	Reference	Status	Category		Value	Plan	Source	Manage
Legislation	*Protection of the Environment Operations Act 1997*				Any			
Legislation	*Public Works and Procurement Regulation 2019*				Any			
Policy	Aboriginal Participation in Construction Policy				<$250,000 >$1 million			
Policy	Aboriginal Procurement Policy				<$250,000 >$1 million			
Policy	M2012-08 Use of Biofuels				Any			
Policy	NSW Government Resource Efficiency Policy				Any			
Policy	PBD 2019-03 Access to Government Construction Opportunities by SMEs				<$1 million			
Policy	PBD 2020-03 Skills, training and diversity in construction				>$10 million			
Policy	SME and Regional Procurement Policy				<$50,000 <$250,000 <$1 million >$3 million			
Policy	Standards for Managing Construction Waste in NSW				Any			

References

Type	Reference	Status	Category		Value	Plan	Source	Manage
Guidance	Australian Disability Enterprises	★	🛒	👷	Any	✓	✓	✓
Guidance	BuyAbility	★	🛒	👷	Any	✓	✓	✓
Guidance	Construction and Demolition Waste: a Management Toolkit	★		👷	Any	✓	✓	✓
Guidance	ISO 20400 Sustainable Procurement	★	🛒	👷	Any	✓	✓	✓
Guidance	NSW Circular Economy Policy Statement	★	🛒	👷	Any	✓	✓	✓
Guidance	OCHRE plan – NSW Government Aboriginal Affairs Strategy	★	🛒	👷	Any	✓	✓	✓
Guidance	Small Business Strategy	★	🛒	👷	Any	✓	✓	✓
Guidance	Supplier Diversity	★	🛒	👷	Any	✓	✓	✓
Guidance	Supporting SMEs and Regional Businesses	★	🛒	👷	Any	✓	✓	✓

Table 10 References: Economic, social and sustainable outcomes

Contents

Section 2

• PLAN, SOURCE, MANAGE •

Plan

Source

Manage

The Plan, Source, Manage approach

Procurements follow three stages: planning, sourcing and managing the procurement.

The Plan, Source, Manage approach identifies key policy requirements and considerations in the procurement process as practical reference for government buyers. It is not intended as a prescriptive process for all procurement. The importance of each stage depends on the size, priorities, required outcomes, risk profile and type of procurement.

The Plan and Manage stages are the most critical to creating and delivering value, and appropriate time and resources should be allocated to these activities.

Procurement Board requirements

The Procurement Policy Framework uses the Plan, Source, Manage approach to provide a structured guide to procurement process as specified in legislation, government policies and Procurement Board policies and directions. Key considerations and mandatory requirements are identified at each step in the process.

Agency policies and tendering manual

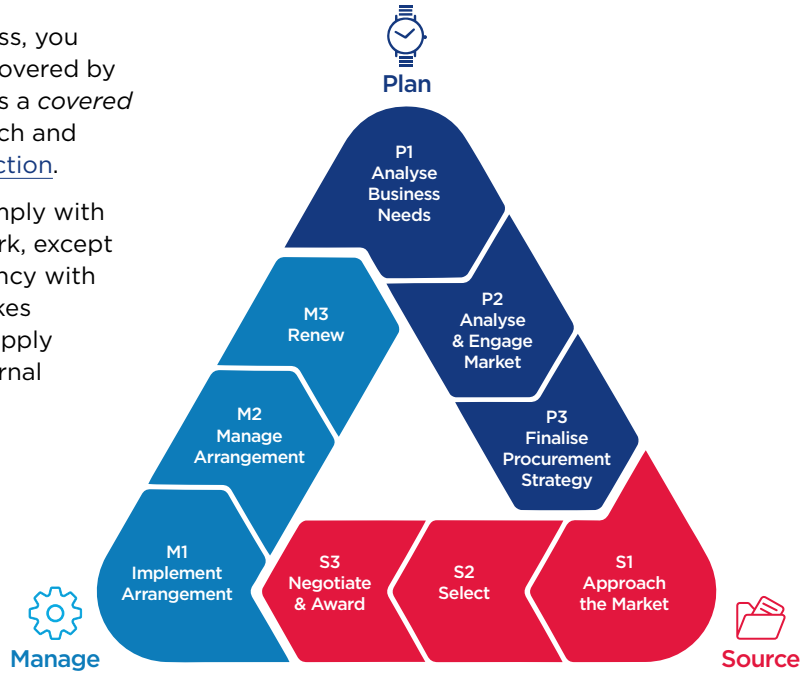
Agency procurement functions will have specific policies and procedures that need to be followed. Agency procurement manuals provide guidance on the specific agency approach to engaging with the market and managing procurement activities.

International procurement agreements

Australia is party to several international trade and procurement agreements which impact NSW government procurement. PBD-2019-05 Enforceable Procurement Provisions (EPP Direction) details the requirements of these international procurement agreements.

Prior to starting any procurement process, you **must first assess** if the procurement is covered by the EPP Direction. If your procurement is a *covered procurement*, your procurement approach and process **must** comply with the EPP Direction.

The procurement process **must also** comply with the mandatory sections of this framework, except where there is any conflict or inconsistency with the EPP Direction. The EPP Direction takes precedence over all other policies that apply to covered procurements, including internal agency policies.



Contents

Plan

Understand the procurement environment and authority to procure.

Accreditation and authority to procure

Relating to	Status	Category		Value	Obligation	Reference
Authority to procure				Any	You **must** procure according to the terms of the agency's accreditation by the Procurement Board.	List of agencies and accreditation status
				≥$657,000	You **must** comply with Enforceable Procurement Provisions Direction (EPP Direction) for procurements valued over the thresholds, unless the agency or the procurement category is exempt. Covered agencies are listed in Schedule 1 of the Direction. Exempt goods and services are listed in Schedule 2.	PBD-2019-05 Enforceable Procurement Provisions
				≥$9.2 million		
				Any	You **must** use whole-of-government contracts and specified prequalification schemes (see existing arrangements **below**) to purchase relevant goods or services, except where exemptions apply (see exemptions **below**).	
				Any	You **must not** split orders to avoid procurement threshold levels and/or governance requirements.	
Accredited agencies				Any	You **must** follow your agency's governance rules, including when to seek multiple quotes or go to tender, and approval requirements.	Refer to agency's policies and procedures

Contents

Key: Mandatory | Recommended | Goods and services | Construction | ICT | Human services | Additional information

Accreditation and authority to procure

<table>
<tr><th>Relating to</th><th>Status</th><th>Category</th><th>Value</th><th>Obligation</th><th>Reference</th></tr>
<tr><td>Goods and services: Level 1 accredited agencies</td><td></td><td></td><td>>$20 million
>$35 million
>$50 million</td><td>You may need to seek concurrence from a level 2 accredited agency or NSW procurement for the proposed procurement approach, based on the value and risk profile of the procurement (refer Section 3 Governance: 02 Accreditation for definition of level 1 and level 2 accreditation).</td><td>Accreditation Program for Goods and Services Procurement</td></tr>
<tr><td rowspan="5">Goods and services: Unaccredited agencies</td><td rowspan="5"></td><td rowspan="5"></td><td></td><td>You must follow the following processes to procure goods and services (non-construction) that are not covered under a whole-of-government arrangement:</td><td rowspan="5">PBD 2019-04 Approved Procurement Arrangements
PBD-2019-05 Enforceable Procurement Provisions</td></tr>
<tr><td>Value</td><td>Process</td></tr>
<tr><td>< $10,000</td><td>Purchase from any supplier, subject to agency safety and infrastructure requirements and provided the rates are reasonable and consistent with normal market rates.</td></tr>
<tr><td>$10,000 – $30,000</td><td>Obtain at least one written quotation.</td></tr>
<tr><td>$30,000 – $650,000</td><td>• Obtain at least three written quotations, or
• Conduct an appropriate procurement process approved by the agency head or an accredited agency within the cluster.</td></tr>
<tr><td>>$650,000</td><td>• Comply with the EPP Direction if your agency is listed in Schedule 1 and the goods or services are not exempt under Schedule 2, and
• Conduct a procurement process endorsed by an accredited agency within the cluster (preferred) or NSW Procurement.</td></tr>
</table>

Accreditation and authority to procure

<table>
<tr><th>Relating to</th><th>Status</th><th>Category</th><th>Value</th><th>Obligation</th><th>Reference</th></tr>
<tr><td rowspan="3">Construction: Unaccredited and partially accredited agencies</td><td></td><td></td><td><$1.3 million</td><td colspan="3">You may undertake construction work valued up to $1.3 million.</td><td>PBD 2014-03C Threshold for Unaccredited Work</td></tr>
<tr><td></td><td></td><td>>$1.3 million</td><td colspan="3">You must, for work valued over $1.3 million:
• Use the contract templates and guidelines on buy.nsw, and/or
• Get assistance from an external provider or accredited agency, as follows (based on project value and risk profile):</td><td rowspan="7">Agency Accreditation Scheme for Construction
Construction contract templates
Construction procurement guidelines</td></tr>
<tr><td colspan="4"><table>
<tr><th>Value</th><th>Risk</th><th>Accreditation</th><th>Process</th></tr>
<tr><td>>$1.3 million</td><td>H</td><td>Partial</td><td rowspan="2">Must obtain external support and use the contract templates and guidelines on buy.nsw</td></tr>
<tr><td>>$50 million</td><td>M, L</td><td>Partial</td></tr>
<tr><td><$50 million</td><td>M, L</td><td>Partial</td><td>May undertake phases for which the agency is accredited without external support, and
Must use the contract templates and guidelines on buy.nsw</td></tr>
<tr><td>>$1.3 million</td><td>H, M</td><td>Unaccredited</td><td rowspan="2">Must get external support, and use the contract templates and guidelines on buy.nsw</td></tr>
<tr><td>>$50 million</td><td>L</td><td>Unaccredited</td></tr>
<tr><td><$50 million</td><td>L</td><td>Unaccredited</td><td>May undertake planning phase without external support, and
Must obtain external support and use the contract templates and guidelines on buy.nsw for delivery phase</td></tr>
</table></td></tr>
<tr><td></td><td></td><td>>$1.3 million</td><td colspan="3">You must use the Risk Assessment Tool in Attachment E of the Infrastructure Investor Assurance Framework to assess the level of risk for the proposed construction project. The risk tiers aligned to risk scores are detailed in Table 4, p.16.</td><td>Infrastructure Investor Assurance Framework (Attachment E)</td></tr>
</table>

Contents

Agency procurement planning

Relating to	Status	Category	Value	Obligation	Reference
Goods and services			Any	Accredited agencies **must** submit an *Annual Procurement Plan* to the Board by 31 August each financial year. The plans are also published on eTendering.	Accreditation Program for Goods and Services Procurement
			Any	Unaccredited agencies are **encouraged** to publish an *Annual Procurement Plan* on eTendering.	
			Any	**All** clusters or agencies **must** publish an *Aboriginal Participation Strategy*.	Aboriginal Procurement Policy
Construction			Any	Agencies accredited for construction through the Agency Accreditation Scheme for Procurement (accredited post-2015) **should** publish an *Annual Procurement Plan* on eTendering.	Agency Accreditation Scheme for Procurement
Category plans			Any	Agencies **should** develop category management plans that analyse the category market, emerging trends, risks and impact on competition.	Promoting competition
Business case			Significant proposals	You **must** prepare a business case to submit to Treasury for significant capital, recurrent and ICT investment proposals.	TPP18-06 NSW Government Business Case Guidelines
Gateway review				You **must** register capital, ICT and major recurrent projects with the relevant Gateway Coordination Agency (GCA):	NSW Gateway Policy
			Value	**Project type**	**Gateway Coordination Agency**
			>$10 million	Capital	Infrastructure NSW — Infrastructure Investor Assurance Framework
			>$10 million	ICT	Department of Customer Service — ICT Assurance Framework
			≥$100M over 4 years, or ≥$50 million pa	Major recurrent	Treasury — Recurrent Expenditure Assurance Framework

Agency procurement planning

Relating to	Status	Category	Value	Obligation	Reference
Foreign exchange (FX) risk management			Any	FX risk can arise when an agency purchases, sells or intends to purchase or sell goods and services either directly from/to overseas, or indirectly when goods/services are sourced overseas through domestic providers.	TPP18-03 NSW Government Foreign Exchange Risk Policy
			Any	You **must** consider if the procurement is impacted, either directly or indirectly, by FX risk when planning your procurement and/or preparing a procurement strategy or business case.	
			Any	You **must** consult with Treasury and TCorp to manage FX risk, when an FX risk is identified.	
			Any	You **must** prepare a FX risk management plan if Treasury determines the FX Risk is a *'Substantial Risk'*.	

Selecting a procurement method

Relating to	Status	Category	Value	Obligation	Reference
Emergency procurements			Any	You **must** obtain approval from the agency head or delegate for emergency procurements. They can approve procurements to a value sufficient to meet the immediate needs of the particular emergency.	*Public Works and Procurement Regulation 2019* *Covid-19 Emergency procurement*
			Any	You **must** report every emergency authorisation to the Procurement Board as soon as possible via nswbuy@treasury.nsw.gov.au.	
			Any	You **do not** have to comply with Procurement Board policies or directions, including the EPP Direction, or the terms of accreditation, for emergency procurements. You are **encouraged** to achieve value for money and comply with this Policy Framework where possible.	
Covered procurements			≥$657,000 ≥$9.2 million	The EPP Direction takes precedence over all other policies that apply to covered procurements, including internal agency policies.	PBD-2019-05 Enforceable Procurement Provisions

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Key: Mandatory | Recommended | Goods and services | Construction | ICT | Human services | Additional information

Selecting a procurement method

Relating to	Status	Category	Value	Obligation	Reference
Bushfire or flood recovery works			Any	For works arising out of, in relation to or following the bushfires in calendar years 2019 and 2020, and floods occurring from January to March 2020: • You **must** give first preference to an appropriate *Local Business* based in the local government area (LGA). • If you cannot identify an appropriate *Local Business*, or if a *Local Business* cannot complete the work within a reasonable timeframe, then you may allocate the work to another *Regional Supplier*. • Where no suitable *Local Business* or *Regional Supplier* is available, then another suitable supplier may be used. You are exempt from complying with the EPP Direction for these procurements. Definitions for *Local Business* and *Regional Supplier* are provided in the glossary.	PBD 2020-01: Support for bushfire affected communities
			Any	If you are engaging a head contractor to undertake a project or program of works arising out of these bushfires or floods, you **should**, wherever possible, contractually require the head contractor to first consider *Local Businesses* to deliver associated goods or services.	
Procurement approved by Cabinet or ERC			≥$657,000 ≥$9.2 million	You **must** assess whether the procurement is covered by the EPP Direction and, if applicable, comply with all requirements.	PBD-2019-05 Enforceable Procurement Provisions
			Any	You **do not** have to comply with other Procurement Board policies or directions if there is any inconsistency with the Cabinet or Standing Committee decision regarding the procurement.	PBD-2019-04 Approved Procurement Arrangements
			Any	You **must** comply with this Procurement Policy Framework, Board Directions or other policies that do not conflict with the Cabinet decision, including the need to achieve value for money.	
Supply by government entities			Any	You **may** purchase goods or services directly from another government entity that provides those goods or services as part of its principal functions. Procurements from other government entities are not covered by the EPP Direction.	TPP02-01 Policy Statement on the Application of Competitive Neutrality
			Any	The government entity providing the goods and services (i.e. the supplier) **must** ensure its pricing and other terms and conditions are consistent with *competitive neutrality* principles.	

Selecting a procurement method

Relating to	Status	Category		Value	Obligation		Reference
Exemptions					**Hint:** The following exemptions are compliant with the EPP Direction as they fall under the Schedule 2 or 3 exemption provisions and/or are under the thresholds for *covered procurements*.		
					You **must** check if your agency's specific requirements limit use of these exemptions due to safety, security or infrastructure considerations.		
					You **may** purchase goods and services, including construction, directly from suppliers as per the table below, even if there is a whole-of-government contract in place. Value for money remains the overarching consideration.		
				Value	**Supplier type**	**Process**	
				<$10,000	Any	You **may** purchase from any supplier	PBD2019-04 Approved Procurement Arrangements
				<$50,000	*Small business*	You **may** directly purchase from a small business (< 20 FTEs).	SME and Regional Procurement Policy PBD-2019-03 Construction Procurement Opportunities for SMEs
				<$250,000	*Aboriginal owned business*	You **may** directly purchase from an *Aboriginal owned business*.	Aboriginal Procurement Policy Aboriginal Participation in Construction Policy
				<$1 million	SMEs, for innovative trials	If your agency is accredited, you **may** directly negotiate with an SME supplier to do proof-of-concept testing or outcomes-based trials.	SME and Regional Procurement Policy PBD 2019-03
				No limit	*Disability employment organisation*	You **may** purchase goods and services from an approved *disability employment organisation* via a single written quote.	*Public Works and Procurement Regulation 2019*

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Key: Mandatory | Recommended | Goods and services | Construction | ICT | Human services | Additional information

Selecting a procurement method

Relating to	Status	Category	Value	Obligation		Reference
Preferences				**Hint:** The following *preferences* are compliant with the EPP Direction as they fall under the Schedule 2 or 3 exemption provisions and/or are under the thresholds for *covered procurements*.		
				You **may** *preference SMEs* and *Aboriginal owned businesses* as per the table below, although you **must** ensure value for money.		
Goods and services			**Value**	**Supplier type**	**Process**	
			<$250,000	*Regional*	You **must** first consider purchasing from a *regional supplier* for procurement in a regional area whenever you are permitted to purchase directly from a supplier (i.e. if not required to seek multiple quotes or issue a tender). This includes purchases using standing offers, panels or prequalification schemes.	SME and Regional Procurement Policy
			<$250,000	*SME*	If the procurement is not in a regional area, then you **must** first consider purchasing from an SME for all direct procurements up to $250,000.	
			<$250,000	*Aboriginal owned business*	You **should** first consider purchasing from an *Aboriginal owned business* listed on a prequalification scheme, and **may** directly purchase based on one written quote You **may** invite multiple prequalified *Aboriginal owned businesses* to participate in a *selective tender*	Aboriginal Procurement Policy
				Hint: Many *Aboriginal owned businesses* are also *SMEs*. Where there is an opportunity to use either a suitably qualified *SME* or *Aboriginal owned business*, you may choose which business type *to preference*. If you choose to *preference* an *Aboriginal owned business*, you do not have to *preference an SME*.		

Selecting a procurement method

Relating to	Status	Category	Value	Obligation		Reference
Construction				**Supplier type**	**Process**	
	Mandatory	Construction	<$1 million	SME	You **must** make reasonable efforts to obtain a quote from *SMEs* when using the following prequalification schemes: • SCM1191 Construction consultant services • SCM0256 General Construction Works unless an *SME* cannot reasonably provide a competitive quote.	PBD-2019-03 Access to Government Construction Procurement Opportunities by SMEs
	Recommended	Construction	<$250,000	*Aboriginal owned business*	You **may** directly negotiate with suitably qualified *Aboriginal owned businesses*.	Aboriginal Procurement in Construction
	Recommended	Construction	<$1 million	*Aboriginal owned business*	You **may** invite multiple prequalified *Aboriginal owned businesses* to participate in *a selective tender*.	
Existing arrangements	Mandatory	Goods and services, Construction	Any	You **must** use whole-of government-contracts to purchase applicable goods or services, including construction, except where the exemptions listed above apply.		PBD-2019-04 Approved Procurement Arrangements
	Mandatory	Goods and services, Construction	Any	You **must** use the following whole-of-government prequalification schemes where applicable: • Contingent workforce • Motor vehicle acquisition • ICT services • Office furniture • Operational telecommunications • Financial assessments • General construction works for work valued up to $1 million, **except** – if you issue an *open tender,* or – if you engage a local contractor for a one-off contract valued under $30,000 and you formally invite the contractor to become prequalified.		PBD-2019-04 Approved Procurement Arrangements PBD-2013-01C Financial Assessments PBD-2014-04C Construction Procurement Prequalification Schemes for Work Valued to $1 million

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Key: Mandatory | Recommended | Goods and services | Construction | ICT | Human services | Additional information

Selecting a procurement method

Relating to	Status	Category		Value	Obligation	Reference
Existing arrangements				Any	You are **encouraged** to use the other whole-of-government prequalification schemes.	Whole-of-Government prequalification schemes
				Any	You **must** check if your agency requires you to use any agency-specific standing offers, panel contracts or other arrangements.	
				Any	You **should** check if your agency has any pre-existing contracts, panels or prequalification schemes in place that meet your needs.	
				Any	You **may** use another agency's contracts, panels or prequalification schemes through a *piggybacking* clause.	Multi-agency access (piggyback) clauses
				Any	You **may** seek quotes or tenders from businesses listed on a Standing Offer Notice or Multi-Use List published on the Australian Government's AusTender website.	PBD 2014-07 Recognising Suppliers to Australian Government
Covered procurements				≥$657,000 ≥$9.2 million	You **may** use procurement panels and procurement lists (prequalification schemes) for *covered procurements*, provided they were established in accordance with the EPP Direction. You may also continue to use panels established prior to the EPP Direction coming into effect on 29 November 2019.	PBD-2019-05 Enforceable Procurement Provisions

Creating a new procurement arrangement

Relating to	Status	Category		Value	Obligation	Reference
Engaging with the market				≥$657,000 ≥$9.2 million	PBD-2019-05 Enforceable Procurement Provisions **has changed your market engagement options.**	PBD-2019-05 Enforceable Procurement Provisions
				Any	If you need to engage with the market to select a new supplier, the market engagement method **must**: • achieve value for money • be fair and transparent • ensure maximum competition in the market.	
Construction				Any	You **should** refer to the CILF practice notes as guidance when procuring and delivering major infrastructure projects. The CILF notes provide strategies to address key challenges affecting the construction sector.	Construction Industry Leadership Forum (CILF) Practice Notes

Creating a new procurement arrangement

Relating to	Status	Category		Value	Obligation	Reference
Covered procurements				≥$657,000 ≥$9.2 million	You **must** assess if the procurement is covered by the EPP Direction, and comply with the direction if you determine it is a *covered procurement*. The procurement is a *covered procurement* if: • your agency is listed in Schedule 1 of the EPP Direction, **and** • it will result in any form of contract, **and** • the estimated maximum value: – ≥**$657,000** for goods and services or – ≥**$9.2 million** for construction services or – cannot be estimated, **and** • the goods or services are not exempt under Schedule 2 of the EPP Direction.	PBD-2019-05 Enforceable Procurement Provisions
Estimating the contract value				≥$657,000 ≥$9.2 million	You **must** comply with cl. 7 of the EPP Direction when estimating the maximum value of a *covered procurement.* The estimate must include, amongst other factors, the value of the goods or services to be procured; the value of any options, extensions or renewals; and any remuneration and revenue streams payable by the agency in the proposed contract. A procurement that will result in multiple proposed contracts **must** include the estimated value of all the proposed procurement contracts. The estimate may exclude the estimated value of exempt goods and services listed in Schedule 2 of the EPP Direction.	PBD-2019-05 Enforceable Procurement Provisions

Creating a new procurement arrangement

Relating to	Status	Category	Value	Obligation	Reference
Covered procurements Open approach to market			≥$657,000 ≥$9.2 million	The EPP Direction does not require you to use any specific procurement method or strategy. It does, however, prohibit you from directly inviting suppliers to participate in a procurement except: • in specific circumstances when *limited tendering* may be used (see below) • when using a *procurement panel* or *procurement list* (prequalification scheme) established in accordance with the Direction, or that was in effect prior to 29 November 2019 • when the procurement is exempt from the Direction under clause 29, savings and transition provisions (see over page).	PBD-2019-05 Enforceable Procurement Provisions
			≥$657,000 ≥$9.2 million	You **must** issue an *open approach to market* (OAM) published on NSW eTendering in all other circumstances. This may be an open request for tender (RFT), an expression of interest process (EOI) or any innovative strategy that involves a competitive market approach.	
Multi-stage procurements			≥$657,000 ≥$9.2 million	An OAM may involve a multi-stage process where a limited number of suppliers will be invited to provide further submissions following the initial, open invitation to participate.	PBD-2019-05 Enforceable Procurement Provisions
Limited tendering			≥$657,000 ≥$9.2 million	*Limited tendering* is the process where you directly invite one or more suppliers of your choice to participate in a procurement.	Cl. 15 PBD-2019-05 Enforceable Procurement Provisions
			≥$657,000 ≥$9.2 million	You **may** use *limited tendering* in the circumstances listed in cl. 15 of the EPP Direction. These include, amongst other technical criteria: • you published an OAM and did not receive any complying proposals that represented value for money • only one supplier can provide the goods or services and there is no alternative or substitute for technical reasons • additional deliveries of goods or services are required and a change of supplier would result in significant duplication of costs or cause significant inconvenience for your agency • an extreme urgency exists as a result of unforeseen circumstances and the goods or services cannot be obtained in time using an OAM.	

Creating a new procurement arrangement

Relating to	Status	Category	Value	Obligation	Reference
Covered procurements Limited tendering			≥$657,000 ≥$9.2 million	You **must** keep a written report for each contract awarded by *limited tendering* that includes the circumstances and conditions that justified the use of the limited tender.	Cl. 15(3) PBD-2019-05 Enforceable Procurement Provisions
Transitional arrangements			≥$657,000 ≥$9.2 million	The EPP Direction **does not apply** to any contract or procurement panel entered into before 29 November 2019. It also does not restrict the use of extension options on existing contracts. You can continue to use the contract or the panel for the period it is in force, including extension options if exercised. You **do not** have to comply with the EPP Direction if your procurement commenced before the 29 November 2019, provided the contract is awarded within three years. A procurement is taken to have commenced if: a. the business case which contains a strategy for approaching the market is submitted to another government agency as part of a mandatory process, e.g. Gate 2 of the Gateway Review process or the concurrence process for unaccredited agencies under PBD 2019-04 Approved Procurement Arrangements, or b. if external approval is not required, the date the business case or procurement strategy is approved by an authorised officer within your agency, or c. if neither a) nor b) is applicable, the date the procurement documentation is published on NSW eTendering or your agency's website.	PBD-2019-05 Enforceable Procurement Provisions NSW Gateway Policy PBD 2019-04 Approved Procurement Arrangements
Innovation and non-traditional approaches to procurement			Any	You **should** consider innovative and non-traditional approaches to procurement, subject to meeting legislative and policy requirements including the EPP Direction, such as: • commissioning and contestability • Public Private Partnerships.	Commissioning and Contestability Policy TPP17-07 NSW Public Private Partnerships Guidelines National Public Private Partnerships Policy and Guidelines

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Creating a new procurement arrangement

Relating to	Status	Category	Value	Obligation	Reference
Unsolicited proposals			Any	The government **may** consider *unsolicited proposals* from industry to explore unique and innovative ideas. An *unsolicited proposal* is a proposal to deal directly with the government over a commercial proposition, where the government has not requested the proposal (full definition in Glossary).	Unsolicited proposal process
			Any	*Unsolicited proposals* **must** be forwarded to the Department of Premier and Cabinet for assessment. *Unsolicited proposals* **must not** be used as a substitute for routine competitive procurement or to bypass tender processes.	
Complex market engagement methods			Any	You **may** use a complex market engagement method, such as direct negotiations (i.e. *limited tendering* with one supplier) or managed services contracts.	Complex Market Engagements
			Any	You **must**, when considering a *complex market engagement*: • ensure the procurement process complies with the EPP Direction, if it is a *covered procurement* • ensure the procurement strategy justifies the procurement method, including a comprehensive analysis of the market that demonstrates it is the most suitable approach • demonstrate, for a direct negotiation, that a competitive process does not need to, or cannot, be conducted but value for money can still be achieved • conduct a risk assessment, including addressing the procurement process risks arising from the procurement method.	
			Any	The officer approving the complex market procurement method **must** be satisfied that the agency will satisfy its legislative and policy obligations in relation to the procurement.	
Interactive tendering			Any	You **may** use interactive tendering to provide prospective suppliers with information and feedback as part of the procurement. Confidentiality and probity must be maintained, including using a probity adviser to observe and guide the process, whenever interactives are used.	Interactive tendering guidelines

Creating a new procurement arrangement

Relating to	Status	Category		Value	Obligation	Reference
Skills, training and diversity in construction				>$10 million	You **must** plan for and include skills, training and diversity targets for the engagement of apprentices, learning workers, young people under 25 years, women and Aboriginal and Torres Strait Islander people on major construction projects.	PBD 2020-03 Skills, training and diversity in construction
Resource efficiency and the circular economy				Any	You **should** consider the product lifecycle when conducting needs analysis and developing product specifications, including *circular economy* principles, so that reuse, repurposing, recycling and/or disposal of goods or assets is planned into the procurement process.	NSW Circular Economy Policy Statement Government Resource Efficiency Policy
Bid cost contributions				>$100 million	Agencies **may** consider contributing up to 50% of expected bid costs to eligible unsuccessful bidders for construction projects with an estimated total capital cost over $100 million. You **should** identify the need and rationale for a bid cost contribution in the project's Final Business Case, and the proposed contribution **should** be included in the total project funding envelope presented to ERC or Cabinet for approval prior to commencing the procurement process. You **should** seek Treasury's agreement that conditions of the Bid Cost Contributions policy are met before releasing an Expression of Interest, if you wish to pay bid cost contributions.	NSW Bid Cost Contributions Policy

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Key: Mandatory | Recommended | Goods and services | Construction | ICT | Human services | Additional information

References

Type	Reference	Status	Category		Value	Plan	Source	Manage
Legislation	*Public Works and Procurement Regulation 2019*				Any			
Policy	Aboriginal Participation in Construction Policy (APIC)				<$250,000 >$1 million			
Policy	Aboriginal Procurement Policy (APP)				<$250,000 >$1 million			
Legislation	*Public Works and Procurement Regulation 2019*				Any			
Policy	Aboriginal Participation in Construction Policy (APIC)				<$250,000 >$1 million			
Policy	Aboriginal Procurement Policy (APP)				<$250,000 >$1 million			
Policy	Accreditation Program for Goods and Services Procurement				Any			
Policy	Agency Accreditation Scheme for Procurement (for construction accreditation gained post-2015)				Any			
Policy	Agency Accreditation Scheme for Construction (for construction accreditation gained pre-2015)				Any			
Policy	NSW Bid Cost Contributions Policy				>$100 million			
Policy	C2017-05 Unsolicited Proposals				Any			
Policy	Government Resource Efficiency Policy				Any			
Policy	ICT Assurance Framework				>$10 million			
Policy	Infrastructure Investor Assurance Framework				>$10 million			

References

Type	Reference	Status	Category		Value	Plan	Source	Manage
Policy	National Public Private Partnerships Policy and Guidelines				Any			
Policy	NSW Circular Economy Policy Statement				Any			
Policy	NSW Gateway Policy				>$10 million			
Policy	NSW Public Private Partnerships Guidelines (TPP17-07)				Any			
Policy	PBD-2013-01C Financial Assessments				>$1 million			
Policy	PBD2014-03C Agency Accreditation Scheme for Construction – threshold for unaccredited agencies				>$1.3 million			
Policy	PBD-2014-04C Construction Procurement Prequalification Schemes for Work Valued to $1 million				<$1 million			
Policy	PBD 2014-07 Recognising Suppliers to Australian Government				Any			
Policy	PBD 2019-03 Access to Construction Contracting Opportunities by SMEs				<$1 million			
Policy	PBD 2019-04 Approved Procurement Arrangements				Any			
Policy	PBD-2019-05 Enforceable Procurement Provisions				≥$657,000 ≥$9.2 million			
Policy	PBD 2020-03 Skills, training and diversity in construction				>$10 million			
Policy	SME and Regional Procurement Policy				<$50,000 <$250,000 <$1 million >$3 million			

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References

Type	Reference	Status	Category		Value	Plan	Source	Manage
Policy	TPP02-01 Policy Statement on the Application of Competitive Neutrality	✓	✓	✓	Any	✓	✓	
Policy	TPP16-05 Commissioning and contestability policy	✓	✓	✓	Any	✓	✓	✓
Policy	TPP18-06 NSW Government Business Case Guidelines	✓	✓	✓	Significant	✓		
Policy	TPP19-03 Recurrent Expenditure Assurance Framework	✓	✓		≥$50 million pa ≥$100 million over 4 years	✓	✓	
Guidance	Commissioning and Contestability Practice Guide	✓	✓	✓	Any	✓	✓	✓
Guidance	Construction Industry Leadership Forum (CILF) Practice Notes	✓		✓	Any	✓	✓	
Guidance	Complex market engagement methods	✓		✓	Any	✓	✓	✓
Guidelines	Interactive tendering guidelines	✓	✓	✓	Any	✓	✓	
Guidance	Market approaches guide	✓	✓	✓	Any	✓	✓	
Guidance	Promoting competition	✓	✓	✓	Any	✓	✓	

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Source

Identify and engage suppliers that will deliver best value for money in a framework of probity and fair dealing.

Probity and fairness

Relating to	Status	Category		Value	Obligation	Reference
Probity				Any	Agencies **must** ensure procurement procedures are in place that safeguard fair, transparent and ethical practices.	Refer to agency's policies and procedures
				Any	You **must** be aware of the general and procurement-specific obligations under relevant legislation and the agency's code of conduct, gifts and benefits policy and business ethics statement.	
				Any	You **must** follow the agency's procedures to manage conflicts of interest, both real and perceived.	
Probity advisers and auditors				Any	You **may** engage a *probity adviser* or *auditor*, although this should be the exception rather than the rule for standard procurement activities.	Engaging probity advisers and auditors
				Any	Agencies **should** clearly set out the general principles of probity which staff and *probity advisers/auditors* are expected to apply throughout a procurement or sale process.	
				Any	You, your managers and other agency staff, **retain accountability** for procurement decisions and following probity-rich management practices even if a *probity adviser/auditor* is engaged.	

Probity and fairness

Relating to	Status	Category		Value	Obligation	Reference
Probity advisers and auditors				Any	You **must**, when engaging *probity advisers or auditors*: • be satisfied the engagement will not create a real or perceived conflict of interest arising from this or other work being performed by the *probity adviser/auditor* • not engage auditors that are already engaged in other work within the agency except where the audits are linked or there are other mitigating circumstances • ensure *probity advisers/auditors* remain independent and objective by not engaging the same *probity advisers/auditors* on an ongoing or serial basis over several related or unrelated issues.	Engaging probity advisers and auditors
				Any	Agencies **may** be asked to report to the Procurement Board on the use of *probity advisers and auditors* within the agency.	
				Any	Continuing to engage the same adviser or auditor can, at a minimum, give rise to a perception that the relationship is not robustly independent.	

Tender documentation

Relating to	Status	Category		Value	Obligation	Reference
Tender length and complexity				Any	You **must** when preparing tender documentation: • provide a length limit for tender responses whenever feasible • use plain English • reasonably limit the complexity of tender requirements.	SME and Regional Procurement Policy

Tender documentation

Relating to	Status	Category		Value	Obligation	Reference
Covered procurements Procurement documentation				≥$657,000 ≥$9.2 million	The EPP Direction differentiates between an *open approach to market* (OAM) and *procurement documentation*. An OAM is an invitation (such as a notice or post) to participate in a procurement that is publicly published on NSW eTendering (refer Notifying and briefing the market below for further details). *Procurement documentation* sets out the terms and conditions of the procurement, along with conditions for participation, specifications for the goods and services to be provided, and evaluation criteria.	PBD-2019-05 Enforceable Procurement Provisions
				≥$657,000 ≥$9.2 million	You **must** include the following details in the procurement documentation: • the nature, scope and the quantity of the goods or services being procured, or if the quantity is not known, the estimated quantity • any requirements to be fulfilled including any technical specifications, conformity certification, etc • any conditions for participation including any financial guarantees • the evaluation criteria that will be used to assess submissions and if applicable their relative importance • any dates for the delivery of goods or the supply of services • any other terms or conditions relevant to the evaluation of submissions.	Cl. 18 PBD-2019-05 Enforceable Procurement Provisions
Conditions for participation				≥$657,000 ≥$9.2 million	You **may** set conditions for a tenderer to participate in the procurement. Conditions for participation are used to identify suppliers that can show they have the capacity and ability to fulfil the procurement. They are different from the evaluation criteria.	Cl. 16 PBD-2019-05 Enforceable Procurement Provisions
				≥$657,000 ≥$9.2 million	You **must only** set conditions for participation that ensure the supplier has the: • legal capacity to undertake the procurement • financial capacity to fulfil the procurement • commercial and technical ability to fulfil the procurement on the basis of the supplier's business activities wherever they have occurred.	

Tender documentation

Relating to	Status	Category	Value	Obligation	Reference
Covered procurements Conditions for participation			≥$657,000 ≥$9.2 million	You **must not**: • discriminate against any supplier due to its degree of foreign affiliation, ownership, location or the origin of its goods and services • require suppliers to have prior experience in Australia • require suppliers to have prior contracts with a government agency in Australia.	Cl. 16 PBD-2019-05 Enforceable Procurement Provisions
			≥$657,000 ≥$9.2 million	You **must** include any conditions for participation in the procurement documentation and provide a summary in the OAM for a procurement.	
			≥$657,000 ≥$9.2 million	You **must** invite all suppliers that demonstrate they meet the conditions for participation to participate in the procurement, or include them on the relevant procurement list.	
Specifications			≥$657,000 ≥$9.2 million	You **must** set out specifications: • as performance and functional requirements, where this is appropriate for the procurement • using international standards, if they exist, except where they would not meet your requirements • in generic terms and without referring to particular trademarks, trade names, patents, suppliers, etc. If it is necessary to use these types of references, you must also include the words "or equivalent".	Cl. 17 PBD-2019-05 Enforceable Procurement Provisions
Evaluation criteria			≥$657,000 ≥$9.2 million	Evaluation criteria are used to identify the submission that achieves the required specifications and provides the best value for money. The EPP Direction requires that you have regard to the following factors, if relevant, when assessing value for money: • the financial and non-financial costs and benefits of making the procurement • the quality and quantity of the goods or services • whether the goods or services are fit for purpose • the supplier's relevant experience and performance history • the environmental sustainability of the goods or services • the whole of life costs of the goods or services.	Cl. 3(2) PBD-2019-05 Enforceable Procurement Provisions

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Tender documentation

Relating to	Status	Category	Value	Obligation	Reference
Covered procurements Evaluation criteria			≥$657,000 ≥$9.2 million	You **must**: • disclose evaluation criteria in the procurement documentation, and • if applicable, provide information on the relative importance of the evaluation criteria, e.g. weighted criteria could be listed in the order of weighting or importance.	Cl. 18 PBD-2019-05 Enforceable Procurement Provisions
			≥$657,000 ≥$9.2 million	You **must** ensure any decision to award the contract is in accordance with the evaluation criteria disclosed in the procurement documentation.	Cl. 22 PBD-2019-05 Enforceable Procurement Provisions
Exempt measures and preferences			≥$657,000 ≥$9.2 million	*Exempt measures and preferences* in Schedule 3 of the EPP Direction allow you to continue to comply with the SME and Regional Procurement Policy, the Aboriginal Procurement Policy, the Aboriginal Participation in Construction policy, and other initiatives such as those designed to support businesses that employ people with a disability.	Sch. 3 PBD-2019-05 Enforceable Procurement Provisions
Supplier conduct			Any	You **must**, in all tenders or sourcing documents, ensure prospective tenderers or suppliers are made aware of the requirement to: • comply where relevant with the NSW Procurement Policy Framework, the Supplier Code of Conduct and the NSW Industrial Relations Guidelines: Building and Construction Procurement • provide information concerning any findings of dishonest, unfair, unconscionable, corrupt or illegal conduct against the tenderer, its directors or management.	PBD 2017-07 Supplier Conduct
			Any	The Supplier Code of Conduct documents the minimum expectations and behaviours for doing business with NSW Government. Your agency can build on the code to hold suppliers to more stringent requirements where appropriate.	Supplier Code of Conduct
			Any	Findings of dishonest, unfair, unconscionable, corrupt or illegal conduct have consequences for individual suppliers, up to exclusion from contracting opportunities with the government.	
Supplier due diligence			Any	You **should** conduct additional supplier due diligence checks, in line with the value, nature and risk profile of the procurement and resulting contract.	Supplier due diligence: a guide for NSW public sector agencies

Tender documentation

Relating to	Status	Category		Value	Obligation	Reference
Supplier conduct Excluding suppliers from covered procurements				≥$657,000 ≥$9.2 million	You **may** exclude a supplier from a *covered procurement* if you have a reasonable belief that: • the supplier is bankrupt or insolvent • the supplier has made one or more false declarations • there has been significant or persistent deficient performance by the supplier of any substantive requirement or obligation under a prior contract • the Independent Commission Against Corruption (or equivalent body in a jurisdiction in Australia), within the last 10 years, has made a finding that the supplier engaged in corrupt conduct • the supplier has failed to pay taxes • the supplier has been convicted of an offence punishable by imprisonment of more than 2 years, or a fine of over $200,000 • the supplier has been found guilty of professional misconduct or unprofessional conduct in a jurisdiction in Australia.	Cl. 12 PBD-2019-05 Enforceable Procurement Provisions
Additional requirements for construction contracts						
Supplier conduct				Any	You **must** include the mandatory evaluation criteria on adverse actual or reputational risks arising from supplier conduct in all EOIs and RFTs for construction projects. The criteria wording is provided in PBD 2017-07.	PBD 2017-07 Supplier Conduct
Industrial relations				Any	You **must** clearly set out the requirements of the NSW Industrial Relations Guidelines: Building and Construction Procurement in all EOIs, tenders and contractual documents for construction projects.	NSW Industrial Relations Guidelines: Building and Construction Procurement
				≥$10 million ≥ $5 million	You **must** require tenderers to provide a *Workplace Relations Management Plan* for construction projects where the NSW government or a public sector body contribution is: • ≥$10 million, or • ≥ $5 million and at least 50% of the total construction project value.	

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Tender documentation

Relating to	Status	Category	Value	Obligation	Reference
Standards			Any	You **must** ensure construction materials and processes are fit for purpose, including complying with relevant Australian and international standards, for example by requiring independent certifications, supplier statements or delivery inspections.	PBD-2016-03 Construction Standards and Conformance
			Any	You **must** identify and document the intended purpose or purposes when procuring construction goods or services, including the anticipated uses and period of use.	
			Any	You **must** assess risks arising from non-conforming or non-compliant building products and construction materials, taking account of the intended purpose or purposes of the procurement.	
			Any	You **must** ensure these risks are managed as far as practicable, considering: • legal obligations relating to work health and safety, public safety and environmental protection • compliance with the relevant design and performance standard in the National Construction Code • other relevant international and Australian Standards and technical specifications.	
			Any	You **must** contractually require contractors to comply with relevant standards for building products, construction materials and construction or manufacturing processes, including that they comply with the standards specified in PBD 2016-03.	
			Any	You **must** ensure contractors comply with relevant standards, including where relevant third-party independent certification.	
			≥$10 million	You **are encouraged** to disclose publicly the source of major components and materials on infrastructure projects valued ≥$10 million.	

Tender documentation

Relating to	Status	Category	Value	Obligation	Reference
Financial assessments			Any	You **must** ensure that tender and relevant contract documentation includes appropriate references to the sharing and use of financial assessment reports.	PBD 2013-01C Financial Assessments
			>$1 million	You **must** obtain a financial assessment on the preferred contractor prior to awarding a construction contract for work valued >$1 million. The assessment must be: • no more than six months old for contracts valued $1 million – $10 million • no more than three months old for contracts valued >$10 million.	
Covered procurements				You **must:** • evaluate the financial capacity of the supplier on the basis of the supplier's business activities, wherever they have occurred, and • base the assessment solely on the conditions for participation that you have specified for the procurement. Therefore, the financial capacity criteria specified in the *procurement documentation* must be consistent with the information that you obtain through the financial assessment reports.	Cl. 16(5) PBD-2019-05 Enforceable Procurement Provisions
			Any	You **must** use the Financial Assessments Prequalification Scheme to procure financial assessment reports, unless your agency has capability to prepare financial assessment reports itself.	Financial Assessments Prequalification Scheme
			Any	You **must** address risks and any recommended actions identified in a financial assessment by applying appropriate strategies through the life of the contract.	
			Any	Suppliers that are members of the Financial Assessments Prequalification Scheme are required to provide a copy of each report prepared for an agency to NSW Procurement. These reports are held in a central repository and agencies can request access to reports for specific contractors. The report date is provided to allow agencies to comply with the timeframes above.	Financial Assessments Repository

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Tender documentation

Relating to	Status	Category	Value	Obligation	Reference
Work, health and safety				You **must** include all relevant work, health and safety (WHS) requirements in tender documentation, including: • the requirement to prepare and implement an acceptable *WHS Management Plan* (WHSMP) • any known safety risks relating to the site where the construction work will be carried out • the safe design report and asbestos register, if applicable • monitoring and auditing requirements.	Work Health and Safety Management Guidelines *WHS Regulation 2017*
			<$1 million	You **must** require tenderers to provide evidence of: • capability to develop and implement a WHSMP • previous satisfactory WHS management performance.	
			≥$1 million, or lower if you determine there is a significant risk	You **must** require tenderers to provide evidence of: • an acceptable *WHS Management System* (WHSMS) certified by the Joint Accreditation System of Australia and New Zealand (JAS-ANZ) and aligned with AS/NZS ISO 45001 (or AS4801 until March 2021) • previous satisfactory WHS management performance. If a tenderer has been subject to any WHS prosecutions or penalties in the preceding three years, they must also demonstrate that any shortcomings in their WHSMS have been effectively remedied.	
			Any	You **may** modify the application of the WHS Management Guidelines, subject to complying with the *WHS Regulation 2017*, provided you conduct a detailed analysis of the specific project and/or contract related WHS risks. The risk assessment must use processes that align with the NSW Treasury Internal Audit and Risk Management Policy.	TPP15-03 Internal Audit and Risk Management Policy for the NSW Public Sector

Tender documentation

Relating to	Status	Category	Value	Obligation	Reference
Environmental management	Mandatory	Construction	Any	You **must** include all known environmental management requirements in tender documentation, including: • the requirement to prepare and implement an appropriate site-specific *Environmental Management Plan* prior to work commencing • monitoring and auditing requirements • any project specific requirements such as recycling and reuse of materials, minimising waste, and/or using resources effectively.	Environmental Management Guidelines
	Mandatory	Construction	Any	You **must** assess potential contractors' environmental management capability during the tender evaluation process, except where: • the relative abilities of the potential contractors are known (via existing contracted works), or • it is assessed that environmental management will not affect the tender evaluation outcome (such as with low risk projects).	
	Mandatory	Construction	≥$10 million, or environmentally sensitive contracts	You **must** require tenderers for contracts ≥$10 million, or environmentally sensitive contracts of lower values, to have an independently certified *Environmental Management System* (EMS) that is compliant with AS/NZS ISO 14001:2016 - Environmental management systems. The EMS must be independently certified as compliant by the JAS-ANZ (or equivalent). This includes applicants for prequalification as a tenderer for a range of contracts, and EOIs for pre-registration as a tenderer for a particular contract, valued ≥$10 million or environmentally sensitive projects. Contractors that have been subject to any environmental prosecutions or penalties in the preceding three years must also demonstrate that any area of non-compliance has been remedied.	
	Recommended	Construction	Any	You **may** modify the application thresholds in the Environmental Management Guidelines provided you conduct a detailed analysis of the specific project and/or contract related environmental risks aligned to TPP15-03 Internal Audit and Risk Management Policy.	TPP15-03 Internal Audit and Risk Management Policy

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Tender documentation

Relating to	Status	Category	Value	Obligation		Reference
Quality management			Any	You **must** include all known quality management requirements in tender documentation including the following:		Quality Management Guidelines
			Value	**Type of contract**	**Quality documentation requirements**	
			≥$1 million	Construction Project and contract management	• Independently certified quality management system (QMS) that is compliant with AS/NZS ISO 9001:2016 Quality management systems • Quality Management Plan (QMP) including Inspection and Test Plans (ITP)	
			≥$250,000	Design and engineering		
			≥$50,000	Construction-related product supply		
			Other	Below these thresholds, contractors must provide a QMP, ITPs and/or certificates of product conformity as relevant to the type of contract.		
			Any	Where needed, the requirements for consultant QMPs should be adapted to suit the service to be provided. For project and contract management contractors, you **may** reduce or remove requirements for a QMS/QMP if the works will be conducted under your agency's QMS and QMP.		
			Any	You **may** choose not to assess quality documentation in the tender process if the relative abilities of the potential contractors are known (e.g. via a prequalification process or existing contracted works), or it will not affect the evaluation outcome (e.g. with low risk projects).		
			Any	You **may** accept alternative quality process controls if there are limited potential contractors with a QMS; a QMS is unnecessary relative to the contract risks; appropriate product test certificates are provided; or, for consultant services, an appropriate QMP is provided.		
			Any	You **may** modify the application thresholds in the Quality Management Guidelines provided you conduct a detailed analysis of the specific project and/or contract related quality risks aligned to TPP15-03.		TPP15-03 Internal Audit and Risk Management Policy

Additional evaluation criteria

Relating to	Status	Category	Value	Obligation		Reference
Additional evaluation criteria			Various	For procurements over defined spend thresholds, additional evaluation criteria **must** be included to address government priorities to support SMEs, employment and business opportunities for Aboriginal people, and apprenticeships. These requirements apply to covered procurements as they fall under the *exempt measures and preferences* in Schedule 3 of the EPP Direction.		Sch. 3 PBD-2019-05 Enforceable Procurement Provisions
Goods and services			<$3 million	**Supplier type**	**Requirement**	SME and Regional Procurement Policy
				SMEs	You **may** include a non-price evaluation criterion that considers how tenderers will support the government's economic, ethical, environmental and social priorities, consistent with *exempt measures and preferences* in Schedule 3 of the EPP Direction.	
			>$3 million	SMEs	You **must** include a minimum 15% non-price evaluation criteria that considers how tenderers will support the government's economic, ethical, environmental and social priorities, consistent with relevant exemptions in IPAs. At least 10% (i.e. 2/3 of the 15% weighting) must be allocated to *SME* participation.	
			>$10 million	Aboriginal owned business	You **must**: • require that tenderers include an *Aboriginal Participation Plan* in tender responses • include evaluation criteria to assess tenderers' *Aboriginal Participation Plans*.	Aboriginal Procurement Policy
			>$3 million	Social enterprises	Hint: Preferencing social enterprises in tenders will meet requirements to support the government's economic, ethical, environmental and social priorities. Many social enterprises are also SMEs.	

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Additional evaluation criteria

Relating to	Status	Category	Value	Obligation		Reference
				Priority focus	Requirement	
Construction			>$1 million or primarily directed at Aboriginal communities	Aboriginal employees and businesses	You **must** set a targeted project spend to support Aboriginal participation, at a **minimum 1.5%** of the total estimated contract value. Agencies are encouraged to set higher requirements where appropriate.	Aboriginal Participation in Construction Policy (APIC)
			<$10 million	Skills, training and diversity	You, and any contractors you engage, are expected to commit to supporting skills development on construction projects.	PBD 2020-03 Skills, training and diversity in construction
			>$10 million – $100 million	Skills, training and diversity	You **must**: • embed an apprenticeship target of 20% of the trades workforce on the project • include this target in contract requirements and tender documentation • consider the capacity of potential contractors to meet these requirements when assessing proposals and awarding a contract, including past performance • include in contract requirements that contractors consider the capacity of subcontractors to contribute to the skills and training target • ensure contractors contractually commit to quarterly reporting on progress in achieving the target • provide quarterly reports to Training Services NSW in the Department of Education against agreed targets. You **may** also adopt the additional Infrastructure Skills Legacy Program (ISLP) targets that apply to contracts over $100 million.	

Additional evaluation criteria

Relating to	Status	Category	Value	Obligation		Reference
Construction			>$100 million	Skills, training and diversity	You **must** meet all construction skills requirements for projects valued over $10 million, and apply the following minimum ISLP targets for major construction projects: • 20% of the total labour force of a project to be made up of learning workers • 20% of all trades positions to be made up of apprentices • double the number of women in trade-related work (up from the NSW average of 1% to 2%) • 8% of total project workforce aged less than 25 years • report the employment and training outcomes for people from the local region (as defined in the contract).	PBD 2020-03 Skills, training and diversity in construction
			>$100 million	Apprentices and trainees	You **must** evaluate tenderers for major infrastructure projects on demonstrated ability to work effectively with government and ability to support the government's skills and apprenticeship targets.	M2014-11 Additional Evaluation Criteria for Projects Valued Over $100 Million

Contract requirements

Relating to	Status	Category	Value	Obligation	Reference
Contract templates					
Goods and services, excl. ICT			Any	You **may** use the Procurement Board's standard templates for: • Head (Standing Offer) Agreement – standing offer, including panel, agreement for whole-of-government or agency-wide arrangements • Customer contract order template – individual contracts under a Head Agreement • Agency Specific Contract Terms – one-off contract (i.e. non-standing offer) for goods and services procurement • Approved List – rules for participation in a Supplier List or Prequalification Scheme • Plain English Contract – individual contracts between a prequalified supplier (i.e. supplier on a specified Supplier List) and agency.	Goods and services contract templates
			Any	You **may** customise the standard form contracts to meet specific needs, although where possible agency contracts should reflect the general principles and approach of the commercial terms in the standard form contracts.	
			Any	You **may** need to seek legal advice on changes to the standard form contract.	
ICT				You **must** use the Procure IT Framework when procuring ICT goods or services:	PBD-2020-02 Use of Procure IT Framework and increase of the threshold in Core& Contracts
			<$1 million	• Core& Contracts – low risk ICT procurements <$1 million	
			>$1 million	• Procure IT v3.2 – long form contract agreement template for high risk and/or ICT procurements >$1 million.	
			<$1 million	You **may** use Procure IT v3.2 for any ICT procurement, including <$1 million.	
			Any	You **must** seek DCS's written approval for any variations to the standard terms and conditions of the Procure IT Framework, except for beneficial variations.	
			Any	You **must** provide written notification of any beneficial variations to DCS Legal prior to executing the contract, supported by legal advice confirming the variations are beneficial in nature.	

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Contract requirements

Relating to	Status	Category		Value	Obligation	Reference
Human services				Any	You **must** use the NSW Human Services Agreement template when procuring *human services from NGOs*.	PBD 2017-04 Procuring Human Services from NGOs
				Any	You **must** seek approval to amend the template from the agency General Counsel (or external legal counsel) and the Chief Procurement Officer.	
				Any	You **must** annually report amendments to the template to the Human Services Category Management Working Group.	
Construction				Any	You **must** ensure construction contracts include appropriate references to:	
					• NSW Industrial Relations Guidelines: Building and Construction Procurement	NSW Industrial Relations Guidelines
					• compliance with relevant international or Australian standards	PBD-2016-03
					• sharing and use of financial assessment reports	PBD 2013-01C
					• WHS requirements, including the requirement to prepare and implement a WHS Management Plan, and the schedule and procedures for monitoring and audit activities	WHS Management Guidelines *WHS Regulation 2017*
					• all known environmental management requirements, including the requirement for a site-specific Environmental Management Plan (EMP), and the schedule and procedures for EMP reviews.	Environmental Management Guidelines
					• quality management requirements, including the preparation of a Quality Management Plan and/or Inspection and Test Plans, and the schedule and procedures for monitoring or audit activities.	Quality Management Guidelines
				Any	You **must** use the scheme-specific contract documents when using construction prequalification schemes.	Construction prequalification schemes

Contract requirements

Relating to	Status	Category	Value	Obligation	Reference
Construction *Unaccredited and partially accredited*	Mandatory	Construction	>$1.3 million	You **must** use the construction contract templates and guidelines on buy.nsw for construction work valued >$1.3 million: • GC21 – construction contracts > $1 million, or of lower value with complex contractual requirements • Consultancy services • Project management services • Expression of interest – seeks an indication of interest from potential service providers to undertake specific work.	Agency Accreditation Scheme for Construction Guide for Agencies PBD 2014-03C Threshold for Unaccredited Work Construction contract templates Construction procurement guidelines
	Recommended	Construction	<$1.3 million	You **may** use the construction contract templates and guidelines on Procurement for construction work valued <$1.3 million, including simplified contracts for lower value work: • Minor works MW21 – straightforward construction contracts <$1 million • Mini minor works – construction contracts <$50,000 with simple terms.	
Accredited agencies	Recommended	Construction	Any	You **may** use the standard construction contract templates and construction procurement guidelines on buy.nsw.	Construction procurement
Reporting					
Goods and services	Mandatory	Goods and services	>$10 million	You **must** ensure contracts include supplier commitments and reporting obligations under the Aboriginal Procurement Policy.	Aboriginal Procurement Policy
	Mandatory	Goods and services	>$3 million	You **must** incorporate supplier SME and sustainability commitments and reporting obligations into applicable agreements and/or contracts.	SME and Regional Procurement Policy
Construction	Mandatory	Construction	>$1 million	You **must** ensure contracts include supplier commitments and reporting obligations under the APIC policy.	Aboriginal Participation in Construction Policy
	Mandatory	Construction	>$10 million	You **must** ensure applicable contracts include supplier obligations and quarterly reporting requirements on skills, training and diversity targets. Contracts must also include requirements that contractors consider the capacity of subcontractors to contribute to the skills and training target.	PBD 2020-03 Skills, training and diversity in construction

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Key: Mandatory | Recommended | Goods and services | Construction | ICT | Human services | Additional information

Contract requirements

Relating to	Status	Category	Value	Obligation	Reference
Contract duration			Any	You **may** determine a suitable duration for the contract depending on the circumstances of the contract and subject to approval by the agency head or delegate.	
			Any	Contract duration should not, generally, be greater than five years including extension options.	
Commercial approaches in contracts					
Insurance				You **must** use the Treasury Managed Fund (TMF) for all government insurance requirements. The TMF provides member agencies with unlimited cover worldwide including workers compensation insurance, general insurance and travel protection.	TC12-12 Mandatory use of the TMF for all Government insurance requirements
Principal arranged insurance			>$10 million	You **must** arranged Principal Arranged Insurance (PAI) for construction projects through icare.	TC16-11 Mandatory principal arranged insurance for all major capital works projects
			<$10 million	You **may** decide if PAI is required. PAI must be organised through icare if you decide to insure the project.	
Public liability and professional indemnity insurance			Any	You **must** apply the minimum possible levels of public liability and professional indemnity insurance for SMEs, giving regard to the risk of the engagement.	SME and Regional Procurement Policy
			Any	You **should** minimise insurances and indemnities for all other suppliers, with risk allocated to the party best placed to mitigate or manage those risks.	Commercial approaches in contracts
			Any	You **should** only require professional indemnity insurance if professional services or expert advice are being supplied.	
Insurance requirements			Any	Insurance requirements should be determined for each contract based on the type of procurement arrangement, value, risk profile, category and market profile and other relevant factors.	Commercial approaches in contracts

Contract requirements

Relating to	Status	Category	Value	Obligation	Reference
Proportionate liability in construction contracts			Any	You **may** only contract out of Part 4 of the *Civil Liability Act 2002* in a construction contract when an assessment clearly demonstrates that it is justified.	PBD 2017-03 Civil Liability Act 2002 Proportionate Liability
			Any	You **must** submit a report to Public Works Advisory (PWA) whenever you exclude proportionate liability in a construction contract. The report must set out the reasons for excluding proportionate liability.	
Indemnities			Any	You **should** cap indemnities required from suppliers, as uncapped liability by a supplier in favour of the state is not considered reasonable. The default position is for indemnities to be capped as a multiple of the per annum contract value.	Commercial approaches in contracts
			Any	Agencies **should not** as a general rule give indemnities. If required, the agency's liability should be limited to 1x the contract value (in total).	
			Any	Some board-mandated contract templates may have specific indemnity requirements that differ from these settings, due to the nature of the goods or services being procured.	
Guarantees			Any	You **should** limit the use of financial securities, bank guarantees, or performance guarantees to necessary circumstances.	
Intellectual property (IP)			Any	You **should** ensure that whichever party owns intellectual property (IP) at the start of the contract retains that ownership. You **should** allow suppliers to retain ownership of IP in any product developed under contract, with the agency given a perpetual, transferable, royalty free licence to use the IP. If there is a case for the agency to retain ownership of IP, you **may** decide whether the supplier is to be granted a licence to use that IP without charge (including the right to commercially exploit the IP), or place restrictions on the use of the IP.	

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Key: Mandatory | Recommended | Goods and services | Construction | ICT | Human services | Additional information

Contract requirements

Relating to	Status	Category		Value	Obligation	Reference
Price refresh mechanisms				Any	You **should** consider the individual circumstances of the contract, product and/or service to determine the appropriate price adjustment mechanism.	Commercial approaches in contracts
Extension options				Any	You **may** include extension options in contracts, although the total contract term should not generally exceed five years. Extension options should only be exercised if the contract is meeting the agency's needs and supplier performance is satisfactory.	
				Any	Extension options **must** only be exercised where it can be demonstrated the contract will continue to deliver value for money.	
Covered procurements					You **must not** use contract extension options, cancel a procurement, or modify or terminate an awarded contract, in order to avoid the operation of the EPP Direction.	Cl. 11 PBD-2019-05 Enforceable Procurement Provisions
Termination				Any	You **may** require the right to terminate for convenience but should provide for suppliers to be compensated for out-of-pocket costs reasonably incurred prior to receiving the notice of termination, in the expectation that the agreement or project would continue.	
Dispute resolution				Any	You **should** require the agency and supplier to seek to resolve disputes in good faith, with mediation the preferred method if this fails. Expert determination **should** be avoided.	Premier's Memorandum 2016-03 Model Litigant Policy for Civil Litigation

Notifying and briefing the market

Relating to	Status	Category	Value	Obligation	Reference
Advance notice	Recommended	Goods and services, Construction	Any	You **should** provide as much advance notice as possible of upcoming procurement opportunities. Advance notice can be provided by publishing *Annual Procurement Plan*[1], publishing a notice of *proposed RFT* or other early industry engagement activities.	
Pre-tender briefings	Mandatory	Goods and services	Any	You **must** provide pre-tender briefings when reasonably requested by *SMEs* and *regional suppliers*.	SME and Regional Procurement Policy
	Recommended	Goods and services, Construction	Any	You **should** provide tender briefings for all significant or complex procurements to allow suppliers to better understand the requirements.	
	Recommended	Goods and services, Construction	Any	You **should** provide group pre-tender briefings rather than to individual suppliers, to ensure all suppliers have equal access to tender information.	
Interactive tendering	Recommended	Goods and services, Construction	Any	You **may** use interactive tendering to provide prospective suppliers with information and feedback as part of the procurement. Confidentiality and probity must be maintained, including using a probity adviser to observe and guide the process, whenever interactives are used.	Interactive tendering guidelines
Online advertising	Mandatory	Goods and services, Construction	Any	You **must** advertise *open tenders* electronically on NSW eTendering, except where exceptional reasons require the use of print. In these cases, eTendering must still be used to notify the market of the tender.	M2011-16 NSW Government Tenders
	Recommended	Goods and services, Construction	Any	You **may** also publish the request for tender on other platforms as determined by your agency.	
Covered procurements	Mandatory	Goods and services, Construction	≥$657,000 ≥$9.2 million	You **must** publish any *open approach to market* (OAM) for on NSW eTendering for covered procurements.	PBD-2019-05 Enforceable Procurement Provisions
Procurement documentation	Mandatory	Goods and services, Construction	≥$657,000 ≥$9.2 million	You **must**, to the extent practicable, make relevant *procurement documentation* available for free by electronic means at the same time that you publish the OAM.	
	Recommended	Goods and services, Construction	≥$657,000 ≥$9.2 million	The *procurement documentation* **may** be made available through NSW eTendering or through some other method, such as your agency's website.	

[1] Annual Procurement Plans are mandatory for accredited agencies.

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Key: Mandatory, Recommended, Goods and services, Construction, ICT, Human services, Additional information

Notifying and briefing the market

Relating to	Status	Category		Value	Obligation	Reference
Covered procurements Open approach to market				≥$657,000 ≥$9.2 million	You **must** include the information detailed in cl. 14 of the EPP Direction in the OAM on NSW eTendering, including: • a description of the procurement, including, if appropriate, the nature and quantity of the goods and services to be procured, or where the quantity is not known, the estimated quantity • an explanation of the procurement process that will be followed • the duration of any contract or the period when goods or services must be provided • a summary of any conditions for participation, including documents or certifications that must be provided • agency contact details, how to obtain procurement documentation and the date for lodging submissions • if applicable, the criteria that will be used to select a limited number of suppliers who will be invited to make further detailed submissions and the justification for limiting the number • if applicable, a statement that you intend to conduct negotiations.	Cl. 14 PBD-2019-05 Enforceable Procurement Provisions
Conditions of participation				≥$657,000 ≥$9.2 million	You **must** include any conditions for participation in the OAM for a procurement.	
Negotiations				≥$657,000 ≥$9.2 million	You **must** indicate in the OAM if you plan to conduct negotiations regarding a procurement.	

Notifying and briefing the market

Relating to	Status	Category	Value	Obligation	Reference
Covered procurements Multi-stage procurements			≥$657,000 ≥$9.2 million	You **must**, if you intend to use a multi-stage process that involves selecting a limited number of suppliers to provide further submissions (e.g. shortlisting suppliers), include in the OAM: • a statement that you intend to invite further submissions from a limited number of suppliers, • the criteria you will use to select the suppliers, and • the justification for limiting the number of suppliers who will be invited to lodge further submissions.	PBD-2019-05 Enforceable Procurement Provisions
Procurement lists (prequalification schemes)			≥$657,000 ≥$9.2 million	You **must** include the above criteria in the notice inviting suppliers to join a procurement list, if only a limited number of suppliers will be invited to provide submissions for any procurements using the list (i.e. if a limited number of suppliers will be selected to respond to procurement opportunities such as an RFQ, RFP or RFT).	Cl. 25 PBD-2019-05 Enforceable Procurement Provisions
			≥$657,000 ≥$9.2 million	You **must** include the conditions for participating in a procurement list in the notice inviting applications to be included on that list.	
Tender periods			Any	You **must** ensure tender periods give all businesses reasonable time to effectively price and prepare their submissions or bids.	
Covered procurements			≥$657,000 ≥$9.2 million	You **must** provide suppliers with sufficient time to prepare and submit a response to any invitation to participate in a procurement, consistent with your agency's reasonable needs. This applies even where some suppliers may be able to respond in a shorter period, and this consideration overrides the permitted minimum timeframes below.	PBD-2019-05 Enforceable Procurement Provisions

Notifying and briefing the market

Relating to	Status	Category	Value	Obligation		Reference
Tender periods Covered procurements			≥$657,000 ≥$9.2 million	You **must** provide the following **minimum** timeframes for covered procurements, bearing in mind the principal requirement to provide suppliers sufficient time to prepare and submit a response. These minimum timeframes also apply to covered procurements using a procurement panel or procurement list.		PBD-2019-05 Enforceable Procurement Provisions
				10 calendar days	• If you require the goods or services urgently, or • If you are procuring commercial goods or services that are routinely for sale to businesses for non-government purposes, or • If you have published an open approach to market (OAM) within the previous 12 months for substantially similar goods or services and stated in that OAM that a further OAM will be published, or • If you have included a notice of the procurement in an annual procurement plan published on NSW eTendering at least 40 days before publishing the OAM.	
				25 calendar days	In all other circumstances.	
Tender periods Non-covered procurements			Any	You **should** allow longer timeframes for complex and/or high value tenders, e.g. construction works that involve significant design elements may warrant longer tender periods.		Market Approaches Guide
			>$100 million	You **should** consider the timing benchmarks provided by Infrastructure Australia for procurements > $100 million that involve design and construct, PPPs or alliance delivery models.		Infrastructure Australia: Efficiencies in major project procurement volume 1

Notifying and briefing the market

Relating to	Status	Category	Value	Obligation		Reference
Tender periods Non-covered procurements			<$100 million	The following **minimum** timeframes are **recommended** for procurements <$100 million:		Market Approaches Guide
				No set period	Where there is a genuine urgent need attached to the procurement, including in response to a critical issue or emergency.	
				10 calendar days	• Where the tender is included in the agency's published procurement plan on NSW eTendering with details of the procurement, the timing of the approach to market and advice on how to obtain tender documentation. • Where the goods and services are available through a panel contract, standing offer or prequalification scheme recognised by the NSW Government. • Where the approach to the market is part of recurring procurement arrangements undertaken by the agency.	
				25 calendar days	In all other cases where the tender is published on NSW eTendering.	
				30 calendar days	In all cases where the tender is not published on NSW eTendering.	
Extensions			Any	You **should** only extend tender periods where late addenda or some other exceptional circumstance impacts tenderers' ability to meet the initial deadline.		
			Any	You **must** apply the same tender extension period to all prospective tenderers, including for covered procurements.		Cl. 23(5) PBD-2019-05 Enforceable Procurement Provisions

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Key: Mandatory | Recommended | Goods and services | Construction | ICT | Human services | Additional information

Notifying and briefing the market

Relating to	Status	Category		Value	Obligation	Reference
Addenda				Any	You **should not** issue tender addenda within five working days of the closing date. If this is not possible, you should consider extending the tender period by at least five working days.	
Covered procurements				≥$657,000 ≥$9.2 million	You **may** amend or correct mistakes in an OAM or the procurement documentation.	Cl. 20 PBD-2019-05 Enforceable Procurement Provisions
				≥$657,000 ≥$9.2 million	You **must**, if you amend or reissue the OAM: • publish the amended OAM on NSW eTendering • send the amended procurement documents to all suppliers participating in the procurement • if you cannot identify all suppliers who may be participating, republish the amended documents at the same location they were originally published.	
				≥$657,000 ≥$9.2 million	You **must** provide suppliers with reasonable time to modify and re-lodge their submission. If necessary, suppliers **must** be provided time to re-lodge submissions which have already been lodged.	
Requests for information				≥$657,000 ≥$9.2 million	You **must** promptly reply to any reasonable request from a supplier for relevant information about a procurement, provided it is not contrary to Australian law and does not give the supplier any unfair competitive advantage over other suppliers participating in the procurement process.	Cl. 18(20) and cl. 19 PBD-2019-05 Enforceable Procurement Provisions
Late submissions				Any	You **should not** accept a late submission, unless the delay is due to an action or failure by the agency, or very exceptional circumstances. You must ensure no other tenderers are disadvantaged by accepting the late submission.	
Correction of errors				≥$657,000 ≥$9.2 million	For covered procurements, you **must** provide the same opportunity to all suppliers if you allow a tenderer to correct unintentional errors between the time you open the submissions and awarding the contract.	Cl. 24 PBD-2019-05 Enforceable Procurement Provisions

Negotiations and contract award

Relating to	Status	Category	Value	Obligation	Reference
Covered procurements Negotiations			≥$657,000 ≥$9.2 million	You **may** negotiate with suppliers during a procurement if: • you have evaluated submissions and none will provide best value for money in terms of the evaluation criteria specified in the procurement documentation, or • the open approach to market for the procurement indicated the agency intended to negotiate with suppliers.	Cl. 21 PBD-2019-05 Enforceable Procurement Provisions
Contract award			≥$657,000 ≥$9.2 million	You **must** award a contract to the supplier you have determined: • will provide best value for money, in accordance with the evaluation criteria specified in the procurement documentation • is fully capable of undertaking the contract, and • satisfies the conditions for participation specified in the procurement documentation.	Cl. 22 PBD-2019-05 Enforceable Procurement Provisions
			≥$657,000 ≥$9.2 million	You **may** decide not to award a contract if: • you determine it is not in the public interest, or • no supplier has satisfied the evaluation criteria for the procurement. In these circumstances, you may consider whether it is appropriate to undertake a limited tender in accordance with cl. 15 of the EPP Direction.	
Limited tendering			≥$657,000 ≥$9.2 million	You **must** prepare and keep a written report for each contract awarded by *limited tendering* that includes: • the value and type of goods or services • the circumstances and conditions that justified the use of the limited tender.	Cl. 15(3) PBD-2019-05 Enforceable Procurement Provisions

Post-award requirements

Relating to	Status	Category		Value	Obligation	Reference
Contract disclosure				≥$150,000 inc. GST	You **must** publicly disclose all contracts ≥**$150,000 including GST within 45 working days** of becoming effective.	*Government Information (Public Access) Act 2009*
				≥$150,000 inc. GST	You **must** publish the contract details in the agency's contract register on NSW eTendering.	
				≥$150,000 inc. GST	You **may** publish the contract details in any other location the agency makes its open access information available.	
				≥$150,000 inc. GST	You **must** keep the contract information publicly available for at least 20 working days, until the project is complete, or until the goods and services have been provided under the contract.	
				≥$150,000 inc. GST	Additional disclosure requirements apply in certain circumstances, such as if there has not been a tender process and/or the terms and conditions of the contract have been directly negotiated with the supplier. Refer to the GIPA Act for details of the contract information to be disclosed for certain types of contracts.	
Aboriginal owned businesses				>$50,000	You **must** disclose all goods and services (excluding construction) contracts >$50,000 with an *Aboriginal owned business* **within 45 working days** of becoming effective. The disclosures must be made using the Contract Award Notice functionality on NSW eTendering	Aboriginal Procurement Policy
Debriefing prospective suppliers				Any	You **must** provide post tender briefings when reasonably requested by *SMEs* and *regional suppliers*.	SME and Regional Procurement Policy
				Any	You **should** provide post tender briefings for any unsuccessful applicant when reasonably requested.	
Covered procurements				≥$657,000 ≥$9.2 million	You **must** provide debriefs to unsuccessful tenderers on request, outlining the reasons their submission was not successful.	Cl. 28 PBD-2019-05 Enforceable Procurement Provisions

Post-award requirements

Relating to	Status	Category		Value	Obligation	Reference
FX Risk					If the contract or procurement agreement involves goods and/or services sourced from outside Australia, it is likely there will be an FX risk.	TPP18-03 NSW Government Foreign Exchange Risk Policy TCorp Foreign Exchange Execution Framework
				Any	You **should** consult with Treasury and TCorp about managing FX risk if the contract could be affected by foreign currency movements, including the level of exposure is uncertain or could change over the life of the contract.	
				>A$500,000	You **must** hedge identified FX risks within three business days after committing to the contract or transaction, if the FX exposure amount is known and over the FX Risk Policy Threshold (currently A$500,000 or equivalent).	
Aboriginal participation				>$10 million	You **must** require successful suppliers to provide a final *Aboriginal Participation Plan* following contract award, for applicable goods and services contracts.	Aboriginal Procurement Policy
				>$1 million, or targeted to aboriginal communities	You **must** require successful suppliers to provide a final *Aboriginal Participation Plan* following contract award, for applicable construction projects.	Aboriginal Participation in Construction Policy
				>$10 million >$1 million	You **must** report progress against the commitments made in *Aboriginal Participation Plans* into buy submitting the Interim Policy Reporting Tool (Construction or Goods and Services) to NSWP.Policy@treasury.nsw.gov.au.	Interim Policy Reporting Tool - Construction - Goods and Services
Additional requirements for construction contracts						
Work, health and safety				Any	You **must** require the selected principal construction contractor to provide a compliant *WHS Management Plan* before work commences. NB the *WHS Regulation 2017* requires the principal contractor to prepare a *WHS Management Plan* for any construction works valued over $250,000. You **must** review the Plan to ensure it addresses the elements identified in the WHS Management Guidelines.	WHS Management Guidelines WHS Regulation 2017

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Post-award requirements

Relating to	Status	Category	Value	Obligation	Reference
Environmental management			Any	You **must** require successful suppliers to prepare and implement an appropriate site-specific *Environmental Management Plan* prior to work commencing.	Environmental Management Guidelines
Quality management			Any	You **must** review the successful supplier's *Quality Management Plan, Inspection and Test Plans* and/or product certifications prior to work commencing or a product being accepted for use on the project, to ensure they conform with the contractually-specified quality requirements.	Quality Management Guidelines
Bid cost contributions			>$100 million	If your agency has decided to offer bid costs to unsuccessful tenderers (refer Section 2:01 Plan), contributions **must** only be paid where: • a bid has been submitted which demonstrates the tenderer has genuinely attempted to fully satisfy the intent of the Request for Tender • the tenderer agrees to make available to the State any project-specific intellectual property rights reasonably requested by the agency. Contributions of up to 50% of the estimated bid costs may be paid, as included in the Final Business Case. If a decision is made to increase the bid cost contribution after the Final Business Case is approved, the cost of the contribution will need to be met using project contingencies or existing agency resources. Any request for additional funding is subject to Cabinet consideration.	NSW Bid Cost Contributions Policy

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Other category-specific requirements

Relating to	Status	Category	Value	Obligation	Reference
ICT procurements				You **must** use the Procure IT Framework for any procurement of ICT goods and services:	PBD-2020-02 Procure IT Framework
			<$1 million	• Core& Contracts – low risk ICT procurements <$1 million	
			>$1 million	• Procure IT v3.2 – long form contract agreement template for high risk and/or ICT procurements >$1 million	
Cloud services			Any	You **must** evaluate cloud-based services when procuring ICT goods and services. The evaluation must be based on cost-benefit analysis and achieving value for money over the life of the investment.	DFSI-2015-04 NSW Government Cloud Policy
Telecommunications			>$100,000	You **must**, when procuring telecommunications services with a total contract value >$100,000: • buy through the Telecommunications Purchasing Arrangements (Contract 2210) • cap the maximum term of contracts (including extension options) to: – 3 years for mobile and fixed voice services – 4 years for data and internet services in metropolitan areas – 5 years for data and internet services in all other areas. • seek quotes from at least three providers for telecommunications services at contract expiry, unless purchasing the lowest price offer through Contract 2210 • analyse the effect of proposals on overall competition within the marketplace when assessing proposals • provide data related to telecommunications agreements to the Procurement and Technical Standards – Working Group (PTS-WG) if requested.	PBD-2019-02 Telecommunications Procurement

Other category-specific requirements

Relating to	Status	Category	Value	Obligation	Reference
Telecommunications	Mandatory	ICT	>$100,000	You **must** request an exemption from the PTS-WG if you cannot meet these compulsory requirements or an automatic exemption is not applicable. Refer to buy.nsw for information on the exemption process and the list of automatic exemptions.	
	Recommended	ICT	Any	You **should** consider separating telecommunications RFPs to encourage a more contestable supply market, for example by location (e.g. metro or regional) or by service tower (e.g. voice, data or mobile).	
	Mandatory	ICT	Any	You **must** apply the Link Sharing Principles and Commercial Principles when purchasing any new telecommunications services or building new wide area network (WAN) links.	DFSI-2017-01 Telecommunication Sharing
Radio communications	Mandatory	ICT	Any	You **must** use the NSW Procurement Board's standardised Site Licence Agreement Framework when entering into new site licence arrangements with other agencies.	PBD-2015-03 Radio Communication Site Licences
	Mandatory	ICT	Any	You **must** seek approval from the NSW Telco Authority for all proposals to develop new or additional operational communications infrastructure or services. This includes any expenditure on new radio communications assets and commercial services, and/or for new sites, new towers on a site or upgrades to a site. The Authority must also approve any proposal to be considered by Cabinet's Expenditure Review Committee.	DFSI-2019-01 NSW Government Operational Communications Strategy
	Mandatory	ICT	Any	You **must** use Prequalification Scheme ITS 2573 Operational Telecommunications Services, Equipment and Infrastructure to procure any relevant goods and services, unless exempted by the NSW Telco Authority.	
	Mandatory	ICT	Any	You **must** comply with any technical standards, guidelines or policies issued by the NSW Telco Authority for the procurement and use of operational communications infrastructure, equipment, services and spectrum unless exempted by the Authority.	

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Other category-specific requirements

Relating to	Status	Category	Value	Obligation	Reference
Radio communications			Any	You **must not** approach the Australian Communications and Media Authority (ACMA) in relation to radio frequency allocation and related matters. The NSW Telco Authority will negotiate with the ACMA on behalf of agencies. Contact the Spectrum Management Office of the Authority at telco.spectrum@customerservice.nsw.gov.au.	DFSI-2019-01 NSW Government Operational Communications Strategy
Professional services Standard commercial framework				A *standard commercial framework applies* to engagement types 1 to 13 of the Performance and Management Services Prequalification Scheme (PMS Scheme).	PBD 2019-01 Engagement of Professional Services Suppliers
			<$250,000	You **may** directly engage a supplier on any of the above engagement types for single engagements <$250,000 that comply with the *standard commercial framework*.	
			Any	You **must** follow a more stringent approval process for engagements that do not comply with any element of the *standard commercial framework*, including: • when engaging a supplier that has not accepted the *standard commercial framework* (as listed on PBD 2019-01), **or** • where the engagement proposal is not compliant with the *standard commercial framework*. • Non-compliant engagements **must**: • be approved by the Department Secretary, Executive Agency Head or cluster Chief Financial Officer, but only if they are satisfied the work cannot be undertaken under the *standard commercial framework* • be competitively bid with at least three bids to ensure value for money • be reported through the Procurement Board's Major Supplier's Portal when approved.	
			Any	You **must** report any contract with a supplier that has not accepted the *standard commercial framework*, including contracts outside the PMS Scheme.	

Other category-specific requirements

Relating to	Status	Category	Value	Obligation	Reference
Human services	Mandatory	Human services	Any	You **must** use the NGO Registration Scheme as a first step to sourcing information about *NGOs* which are seeking to, or are contracted to, deliver *human services* on behalf of NSW government. The Registration Scheme is not a prequalification scheme and should not be used to shortlist applicants for procurement activities.	PBD 2016-04 Accessing Information about Human Services NGOs
	Mandatory	Human services	Any	You **must** use the Human Services Agreement template when procuring *human services* from NGOs.	PBD 2017-04 Procuring Human Services
	Recommended	Human services	Any	You **are encouraged** to use the Human Services Outcomes Framework when commissioning for the delivery of *human services*.	Human Services Outcomes Framework
Legal services	Mandatory	Goods and services	Any	You **must** refer core legal work to the Crown Solicitor in accordance with the NSW Government Core Legal Work Guidelines.	M2016-04 NSW Government Core Legal Work Guidelines
	Recommended	Goods and services	Any	You **may** engage the Crown Solicitor for legal matters that are not core legal work, although this work will not be funded from the Attorney General's Legal Fund.	
Travel	Mandatory	Goods and services	Any	You **must** manage official travel undertaken by public officials using public money in accordance with the Travel and Transport Policy.	Travel and Transport Policy
	Recommended	Goods and services	Any	You **should** observe the Travel Operational Guidelines.	Travel Operational Guidelines
Fuel	Mandatory	Goods and services	Any	You **must** use E10 and biodiesel blends where possible, unless there is a clear operational requirement that precludes the use of biofuels.	M2012-08 Use of Biofuels

Other category-specific requirements

Relating to	Status	Category	Value	Obligation	Reference
Resource efficiency			Any	You **must** comply with the government's resource efficiency requirements for: • owned and leased office buildings and data centres • new electrical appliances including whitegoods, televisions, pool pumps, commercial electrical equipment and air conditioning equipment • ICT hardware, printers, photocopiers and DVD players • new buildings and fitouts • owned or leased light vehicles • use of 6% GreenPower • water using appliances • surface coatings and other VOC emitting products such as adhesives, sealants, carpets and carpet underlays • mobile non-road diesel plant and equipment, whether purchased, leased, or contractor-supplied in new buildings and infrastructure.	Government Resource Efficiency Policy
			Any	You **must**, for contractor-supplied plant and equipment in new buildings and infrastructure, including upgrades to existing buildings and infrastructure valued >$10 million: • incorporate a weighting for air emission standards, in conjunction with other environmental considerations, during the tender selection process, and apply a consistent weighting to preference the lowest emission engines • include a requirement for contractors to report on engine conformity with emission standards and the fitting of any exhaust after-treatment devices in procurement contracts.	
			Any	Implementation and reporting on the GREP is voluntary for agencies with fewer than 100 employees.	

References

Type	Reference	Status	Category		Value	Plan	Source	Manage
Legislation	*Government Information (Public Access) Act 2009*	Mandatory	Goods and services	Construction	≥$150,000 inc. GST		✓	
Legislation	*Public Works and Procurement Regulation 2019*	Mandatory	Goods and services	Construction	Any	✓	✓	
Legislation	Work Health and Safety Regulation 2017	Mandatory		Construction	Any		✓	✓
Policy	Aboriginal Participation in Construction Policy (APIC)	Mandatory		Construction	<$250,000 >$1 million	✓	✓	✓
Policy	Aboriginal Procurement Policy (APP)	Mandatory	Goods and services		<$250,000 >$10 million	✓	✓	✓
Policy	Agency Accreditation Scheme for Construction (pre-2015)	Recommended		Construction	Any	✓	✓	✓
Policy	NSW Bid Cost Contributions Policy	Recommended		Construction	>$100 million	✓	✓	✓
Policy	DFSI-2015-04 NSW Government Cloud Policy	Mandatory	ICT		Any		✓	
Policy	DFSI-2017-01 Telecommunication Sharing and Commercial Principles	Mandatory	ICT		Any	✓	✓	
Policy	DFSI-2019-01 NSW Operational Communications Strategy	Mandatory	ICT		Any	✓	✓	
Policy	Environmental Management Guidelines	Mandatory		Construction	Any		✓	✓
Policy	Government Resource Efficiency Policy	Mandatory	Goods and services	Construction	Any	✓	✓	✓
Policy	M2012-08 Use of Biofuels	Mandatory	Goods and services		Any		✓	

Contents

Key: Mandatory | Recommended | Goods and services | Construction | ICT | Human services | Additional information

References

Type	Reference	Status	Category		Value	Plan	Source	Manage
Policy	M2014-11 Additional Evaluation Criteria for Major Projects Valued Above $100M	✓		✓	>$100,000		✓	
Policy	M2016-04 NSW Government Core Legal Work Guidelines	✓	✓		Any		✓	
Policy	NSW Industrial Relations Guidelines: Building and Construction Procurement	✓		✓	Any		✓	✓
Policy	PBD 2013-01C Financial Assessments	✓		✓	>$1 million		✓	✓
Policy	PBD 2014-03C Threshold for Unaccredited Work	✓		✓	>$1.3 million	✓	✓	✓
Policy	PBD-2015-03 Radio Communications Site Licence Agreement Framework	✓	✓		Any	✓	✓	
Policy	PBD-2016-03 Construction Standards and Conformance	✓		✓	Any		✓	✓
Policy	PBD 2016-04 NGO Registration Scheme	✓	✓		Any		✓	
Policy	PBD 2017-03 Civil Liability Act 2002 – Proportionate Liability	✓		✓	Any		✓	✓
Policy	PBD 2017-04 Procuring Human Services from NGOs	✓	✓		Any		✓	
Policy	PBD 2017-07 Supplier Conduct	✓	✓	✓	Any	✓	✓	✓
Policy	PBD-2020-02 Use of Procure IT Framework and increase of the threshold in Core& Contracts	✓	✓		Any		✓	
Policy	PBD 2019-01 Engagement of Professional Services Suppliers	✓	✓		Any		✓	
Policy	PBD-2019-02 Telecommunications Procurement	✓	✓		$100,000	✓	✓	

References

Type	Reference	Status	Category		Value	Plan	Source	Manage
Policy	PBD-2019-05 Enforceable Procurement Provisions				≥657,000 ≥$9.2 million			
Policy	PBD 2020-03 Skills, training and diversity in construction				>$10 million >$500 million			
Policy	Premier's Memorandum 2016-03 Model Litigant Policy for Civil Litigation				Any			
Policy	Quality Management Guidelines				Any			
Policy	SME and Regional Procurement Policy				<$50,000 <$250,000 <$1 million >$3 million			
Policy	Supplier Code of Conduct				Any			
Policy	TC12-12 Mandatory use of the TMF for all Government insurance requirements				Any			
Policy	TC16-11 Mandatory principal arranged insurance for all major capital works projects				>$10 million			
Policy	TPP15-03 Internal Audit and Risk Management Policy				Any			
Policy	TPP18-03 NSW Government Foreign Exchange Risk Policy				Any			
Policy	Travel and Transport Policy				Any			
Policy	Work Health and Safety Management Guidelines				Any			
Guidelines	Commercial approaches to key contract terms				Any			

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Key: Mandatory | Recommended | Goods and services | Construction | ICT | Human services | Additional information

References

Type	Reference	Status	Category		Value	Plan	Source	Manage
Guidelines	Construction procurement guidelines (unaccredited and partially accredited agencies)				>$1.3 million			
Guidelines	Corruption prevention, fairness and probity				Any			
Guidelines	Financial Assessments Reports Central Repository				>$1 million			
Guidelines	Human Services Outcomes Framework				Any			
Guidelines	Interactive tendering guidelines				Any			
Guidelines	Market Approaches Guide				Any			
Guidelines	Supplier due diligence: a guide for NSW public sector agencies				Any			
Guidelines	TCorp Foreign Exchange Execution Framework				Any			
Guidelines	Travel Operational Guidelines				Any			
Templates	Construction contract templates (unaccredited and partially accredited agencies)				>$1.3 million			
Templates	Goods and services contract templates				Any			
Templates	Procure IT Framework				Any			
Templates	NSW Human Services Agreement				Any			

Table 12 References: Source

Contents

Manage

Manage contracts and develop supplier relationships to deliver the best outcome for your agency and the government.

Contract and supplier management

Relating to	Status	Category		Value	Obligation	Reference
Contract and supplier management				Any	Signing an agreement is not the end of a process, but rather the start of an ongoing relationship with the supplier. Both the contract and supplier relationship need to be managed to deliver the best outcome for the agency.	NSW Procurement's approach
				Any	You **should**: • ensure smooth transition of services, especially if there is a new supplier • jointly establish systems and processes with the supplier team to ensure compliance with contract terms and performance requirements, and determine who is responsible for key tasks and activities on the agency and supplier sides • define and maintain the right level of management and resources according to the business criticality and complexity of the procurement arrangement • manage performance, drive continuous improvement and encourage innovation in coordination with the supplier and key stakeholders • track and report benefits to demonstrate how value for money is being delivered.	
Supplier relationship management				Any	Supplier relationship management (SRM) delivers value over and above the minimum levels of performance covered under contracts by focusing attention on the whole value stream.	Supplier Relationship Management Guidelines
				Any	You **may** wish to identify strategic suppliers to develop relationships and foster innovation to deliver additional value.	

Contract and supplier management

Relating to	Status	Category	Value	Obligation	Reference
Supplier conduct			Any	You **must** use best endeavours to identify adverse findings against suppliers and report such findings to the Procurement Board.	PBD 2017-07 Supplier Conduct
			Any	The Supplier Code of Conduct documents the minimum expectations and behaviours for doing business with NSW Government. Your agency can build on the code to hold suppliers to more stringent requirements where appropriate.	Supplier Code of Conduct
			Any	Findings of dishonest, unfair, unconscionable, corrupt or illegal conduct have consequences for individual suppliers, up to exclusion from contracting opportunities with the government.	
Supplier due diligence			Any	You **should** monitor, on an ongoing basis, supplier compliance with contractual, regulatory and other obligations. The level and frequency of checks will vary depending on the value and risk profile of the contract.	Supplier due diligence: a guide for NSW public sector agencies
Paying suppliers on time			<$10,000	You **should** pay invoices up to $10,000 as soon as possible by PCard or equivalent electronic payment method.	Faster Payment Terms Policy
Small businesses			$10,000 – $1 million	In-scope agencies **must** pay registered small businesses (<20 FTEs) within 5 business days of receipt of a correctly rendered invoice, unless an existing contract or standing offer provides for an alternative time.	
			$10,000 – $1 million	The Office of the Small Business Commissioner (OSBC) monitors and reports on agency payment performance to *small businesses*. This process has been automated using the NSW Procurement Spend Cube to develop a *small business* reporting dashboard.	
Annual reporting			Any	Your agency **must** provide details of its performance in paying accounts, including details of any actions taken to improve performance, in its annual report.	Annual Reports (Departments) Regulation 2015[2]
			Any	Your agency **must** report all instances where interest has become payable due to late payment, and the reason for the delay in making that payment, in its annual report.	

Contents

Key: Mandatory | Recommended | Goods and services | Construction | ICT | Human services | Additional information

Contract and supplier management

Relating to	Status	Category		Value	Obligation	Reference
Paying suppliers on time				Any	You **must** ensure construction contractors receive progress payments in compliance with the Security of Payment Act.	*Building and Construction Industry Security of Payment Act 1999* PBD 2013-01C
Construction – security of payments				Any	You **must**, as part of ongoing contract management activities, take steps to verify the claims of head contractors about payments made to subcontractors.	
Aboriginal participation				>$1 million >$10 million	You **must** monitor suppliers' progress in implementing Aboriginal Participation Plans and allocating eligible spend (for construction contracts), and ensure progress reports are provided via the Aboriginal Participation Portal as follows:	Aboriginal Procurement Policy Aboriginal Participation in Construction Interim Policy Reporting Tool - Construction - Goods and Services
					Frequency	
				>$1 million	Quarterly progress reports (construction only)	
				>$10 million	Monthly progress reports	
				>$1 million >$10 million	You **must** ensure suppliers provide an **Aboriginal Participation Report** at the end of the contract, or on a periodic basis depending on the agency's requirements.	
Construction contracts				>$1 million	You **must** ensure suppliers on construction contracts that cannot, or do not, fully allocate Aboriginal Participation funds to eligible spend types, distribute the remainder of the funds to the APIC policy's list of approved bodies, in consultation with the Procurement Board.	Master Builders Association of NSW Literacy for Life Foundation
Resource Efficiency				Any	Your agency **must** report annually against the policy initiatives in the GREP to the Department of Planning, Industry and Environment, including a statement of compliance with the procurement standards in the policy. The reporting deadline for the previous financial year is the last working day in November each year. Compliance with the GREP is voluntary for agencies with fewer than 100 employees.	Government Resource Efficiency Policy

[2] To be replaced by a Treasurer's Direction or Regulation under the *Government Sector Finance Act 2018*.

Contract and supplier management

Relating to	Status	Category		Value	Obligation	Reference
FX Risk				Any	Your agency **must** provide an annual FX Attestation Statement to Treasury by 31 October, for the previous financial year.	FX Risk Policy
				Any	You **must** monitor and annually report to Treasury on FX exposures and any *hedges* in place.	
Extensions				Any	Routinely exercising extension options or rolling-over contracts reduces competition and limits access to new suppliers, products and services. Agencies should consider using extension options on a case by case basis, allowing enough time to conduct a new procurement exercise if the contract is not meeting the agency's needs or delivering value for money.	
				Any	You **must** only exercise extension options where it can be demonstrated the contract will continue to deliver value for money.	
				Any	You **should** conduct a strategic assessment of the market prior to rolling-over or extending a contract, including how the extension will impact competition and create (or continue) barriers to new suppliers.	

Additional requirements for goods and services contracts

Relating to	Status	Category	Value	Obligation	Reference
SME and sustainability commitments			>$3 million	You **must** monitor supplier compliance with SME and sustainability commitments made in response to the *SME and Sustainability Criteria*, as part of contract management activities.	SME and Regional Procurement Policy
			>$3 million	You **must** ensure suppliers with contracts >$3 million provide monthly reports on SMEs that have been engaged in the delivery of the contract to meet SME and sustainability commitments, via the online SME reporting portal.	
Human Services			Any	You **must** report amendments to the prescribed template NSW Human Services Agreement to the Human Services Category Management Group (CMWG) each year.	PBD 2017-04 Procuring Human Services from NGOs
			Any	You **must** require *NGO* service providers to report the: • service delivery location (local government area (LGA)) where their services are delivered to the service user • service user location (LGA) where the service user resides.	
			Any	You **may** seek an exemption from location reporting requirements from the Procurement Leadership Group.	

Additional requirements for construction contracts

Relating to	Status	Category	Value	Obligation	Reference
Skills, training and diversity			>$10 million	You **must** ensure contractors report **at least quarterly** on their achievement against skills, training and diversity targets.	PBD 2020-03 Skills, training and diversity in construction
			>$10 million	You **must** report quarterly to Training Services NSW in the Department of Education against agreed skills, training and diversity targets.	
Financial assessments				You **must** regularly analyse the financial status of contractors throughout the course of construction contracts. At a minimum, financial assessments must be conducted:	PBD 2013-01C Financial Assessments
			Value	**Frequency**	
			$1 million – $10 million	every six months	
			>$10 million	every three months	
			Any	You **must** use the Financial Assessments Prequalification Scheme to source financial assessment reports, or request recent reports for specific contractors from the central repository held by NSW Procurement, unless the agency has capability to conduct financial assessments itself.	Financial Assessments Prequalification Scheme Financial Assessments Repository
			Any	You **must** address identified risks and recommended actions in financial assessment reports throughout the life of the contract.	
Industrial Relations			Any	You **must** ensure contractors comply with the NSW Industrial Relations Guidelines: Building and Construction Procurement and, if applicable, the *Workplace Relations Management Plan*.	NSW Industrial Relations Guidelines

Additional requirements for construction contracts

Relating to	Status	Category	Value	Obligation	Reference
Work, Health and Safety			Any	You **must** review contractors' WHS performance throughout the life of the contract, including WHS management monthly reports and investigating any *Notifiable WHS incidents*. You **must** also:	WHS Management Guidelines
			Value	**Requirement**	
			<$1 million	Review the contractor's implementation of the *WHS Management Plan*	
			≥$1 million	Agree and implement an audit schedule of the contractor's *WHS Management Plan.*	
			≥$1 million	You **should** conduct an audit: • within three months of the start of site work • at least twice in the life of the project, or as otherwise determined to suit the level of risk during the project, with a minimum of two audits conducted over the life of the contract. You **must** ensure any corrective and preventive actions identified during an audit are carried out within agreed timeframes.	
Environmental Management			Any	All staff working on the project site **must** be inducted into the Environmental Management Plan (EMP) and EMP requirements for work on the site.	Environmental Management Guidelines
			Any	You **must** regularly review the contractor's implementation of the EMP over the life of the project, including on-site evaluations. You may determine the number of reviews and the scope of each review dependent on the size and nature of the contract.	
Quality Management			Any	You **should** conduct regular reviews, audits and/or inspections to monitor contractors' implementation of their *Quality Management Systems, Quality Management Plans* and/or *Inspection and Test Plans*, based on the value and risk profile of the contract.	Quality Management Guidelines

Managing the lifecycle of goods and assets

Relating to	Status	Category		Value	Obligation	Reference
Disposal of goods of assets				Any	The *Public Works and Procurement Act 1912* defines procurement to include the disposal of goods that are unserviceable and no longer required. Accordingly, any Board Direction or policy that refers to procurement also applies to the conduct of disposals.	*Public Works and Procurement Act 1912*
				Any	You **must** ensure that disposals are approved by the appropriate authority and that due process and disclosure is undertaken including: • complying with the agency's authority to conduct the disposal (refer to Authority to Procure) • disposal specifications and requirements are disclosed equally to all suppliers invited to quote, if required • supplier selection evaluation criteria are established prior to receiving quotes • proper processes are followed for managing market requests and for receiving and opening quotes.	
Circular economy				Any	You **should** consider the product lifecycle when conducting needs analysis and developing product specifications, including *circular economy* principles, so that reuse, repurposing, recycling and/or disposal of goods or assets is planned into the procurement process.	NSW Circular Economy Policy Statement
				Any	You **must** ensure any disposal or repurposing is consistent with environmental and waste management legislation, regulations and policies.	

References

Type	Reference	Status	Category		Value	Plan	Source	Manage
Legislation	Annual Reports (Departments) Regulation 2015[3]				Any			
Legislation	*Building and Construction Industry Security of Payment Act 1999*				Any			
Legislation	Work Health and Safety Regulation 2017				≥$250,000			
Policy	Aboriginal Participation in Construction Policy (APIC)				<$250,000 >$1 million			
Policy	Aboriginal Procurement Policy (APP)				<$250,000 >$10 million			
Policy	Environmental Management Guidelines				Any			
Policy	Faster Payment Terms Policy				<$1 million			
Policy	Government Resource Efficiency Policy				Any			
Policy	NSW Circular Economy Policy Statement				Any			
Policy	NSW Industrial Relations Guidelines: Building and Construction Procurement				Any			
Policy	PBD 2013-01C Financial Assessments				>$1 million			
Policy	PBD-2016-03 Construction Standards and Conformance				Any			

[3] To be replaced by a Treasurer's Direction or Regulation under the *Government Sector Finance Act 2018*.

References

Type	Reference	Status	Category		Value	Plan	Source	Manage
Policy	PBD 2017-04 Procuring Human Services from NGOs	✓	✓		Any		✓	
Policy	PBD 2017-07 Supplier Conduct	✓	✓	✓	Any	✓	✓	✓
Policy	PBD 2020-03 Skills, training and diversity in construction	✓		✓	>$10 million >$500 million	✓	✓	✓
Policy	Quality Management Guidelines	✓		✓	Any		✓	✓
Policy	SME and Regional Procurement Policy	✓	✓		<$50,000 <$250,000 <$1 million >$3 million	✓	✓	✓
Policy	TPP18-03 NSW Government Foreign Exchange Risk Policy	✓	✓	✓	Any	✓	✓	✓
Policy	Work Health and Safety Management Guidelines	✓		✓	Any		✓	✓
Guidance	Financial Assessments Reports Central Repository	✓		✓	>$1 million		✓	✓
Guidance	Supplier due diligence: a guide for NSW public sector agencies	✓	✓	✓	Any	✓	✓	✓
Guidance	Supplier Relationship Management Guidelines	✓	✓	✓	Any			✓
Guidance	TCorp Foreign Exchange Execution Framework	✓	✓	✓	Any	✓	✓	✓

Table 13 References: Manage

Contents

Key: Mandatory; Recommended; Goods and services; Construction; ICT; Human services; Additional information

Section 3

• GOVERNANCE AND FEEDBACK •

Governance

Accreditation schemes

Government procurement arrangements

Complaints and feedback

Procurement board directions

Governance

The NSW Procurement Board

The NSW Procurement Board is responsible for developing and implementing a government-wide strategic approach to procurement.

The Secretary of The Treasury is the chairperson of the Procurement Board, delegated to the Deputy Secretary, Commercial, Commissioning and Procurement. The board is made up of the cluster Secretaries, or approved deputies.

Objectives and functions of the Board

The objectives of the Board under section 171 of the *Public Works and Procurement Act 1912* are to:

- develop and implement a Government-wide strategic approach to procurement
- ensure best value for money in the procurement of goods and services by and for government agencies
- improve competition and facilitate access to Government procurement business by the private sector, especially by small and medium enterprises and regional enterprises
- reduce administrative costs for government agencies associated with procurement
- simplify procurement processes while ensuring probity and fairness.

The functions of the Board under section 172 of the Act are to:

- oversee the procurement of goods and services by and for government agencies
- develop and implement procurement policies
- issue directions or policies to government agencies
- monitor compliance by government agencies with the requirements of the Act (including NSW Procurement Board directions and policies)
- investigate and deal with complaints about the procurement activities of government agencies
- develop appropriate procurement and business intelligence systems for use by government agencies
- collect, analyse and publish data and statistics in relation to the procurement of goods and services by and for government agencies
- such other functions as are conferred or imposed on the NSW Procurement Board by or under the principal Act or any other Act.

The Board must also exercise its functions in accordance with any applicable Government-wide procurement policies.

Accreditation

The Board accredits agencies to conduct procurement for itself or other government agencies. It may also authorise a government agency to carry out specified procurement of goods and services without accreditation.

Directions and policies of the Board

The Board may issue policies and directions to agencies regarding, but not limited to:

- the methods to be used for procuring goods and services
- contracts for the procurement of specified goods and services
- the kinds of contracts for which tenders are required
- the limits and duration of contracts
- any matters relating to procurement procedures arising from a complaint about the procurement activities of a government agency.

Obligations of agencies

Agencies are required to conduct their procurement functions in accordance with:

- the policies and directions of the Board
- the terms of its accreditation
- the principles of probity and fairness.

Each agency must ensure it obtains value for money when procuring goods and services.

Contents

Accreditation schemes

The Procurement Board has established separate goods and services and construction accreditation schemes. The accreditation schemes:

- establish minimum standards for managing procurement activities
- effectively manage risk
- promote the delivery of outcomes towards strategic priorities
- drive continuous improvement and capability development across the sector.

Goods and services accreditation

Level 1 accredited	Agencies **may** independently conduct procurement activities up to a maximum contract value based on the risk profile of the procurement as follows:	
	Low risk	<$50 million
	Medium risk	<$35 million
	High risk	<$20 million
	Concurrence from a Level 2 accredited agency or NSW Procurement is required for a Level 1 accredited agency to conduct procurements above these thresholds.	
Level 2 accredited	Agencies **may** independently conduct procurement activities in line with approved budgets, financial delegations and procurement delegations. The responsibilities of Level 2 accredited agencies include: • taking a leadership role in relation to procurement in the cluster • taking lead buyer status for a category to establish and manage whole-of-government contracts.	

Accredited agencies are responsible for establishing and managing internal procurement systems and governance mechanisms, in compliance with board directions and policies.

Accredited agencies **must** annually report to the board on performance over the previous year, and procurement plans for the next 12 or 24 months. Accredited agencies **must** also monitor and report trigger events that could impact their ability to meet accreditation requirements.

Construction accreditation

The construction accreditation scheme is currently under review. The updated accreditation scheme will become available in 2019.

Two legacy construction accreditation schemes are currently in place:

Accredited pre-2015
Agency Accreditation Scheme for Construction: Guide for Agencies

Accredited post-2015
Agency Accreditation Scheme for Procurement
(joint scheme including goods and services procurement)

Construction accreditation assesses agencies for the planning and delivery phases of procurement. An agency may be accredited to undertake construction project planning without support but be required to obtain external support for the delivery phase. Unaccredited and partially accredited agencies must use the standard construction contract templates and guidelines for construction work valued above $1.3 million. Fully accredited agencies can undertake procurement without external support using their own procurement system.

Resources

Category	Reference
Goods and services	Accreditation Program Requirements
	Agency accreditation status list (goods and services)
Construction	Agency Accreditation Scheme for Construction: Guide for Agencies (accredited pre- 2015)
	Agency accreditation Scheme for Procurement (accredited post-2015)
	Agency accreditation status list (construction)

Contents

Government procurement arrangements

NSW Government procurement arrangements include contracts, prequalification schemes, standing offers and panels, covering a broad array of goods and services including construction.

Whole-of-government arrangements

Standing offers and panels

Standing offers, including panels, are used by NSW government agencies to purchase goods and services that are required on a recurring basis across the sector. Standing offers are usually established using a tender process.

A *standing offer* is an arrangement setting out the terms and conditions, including a basis for pricing, under which a supplier agrees to supply specific goods and services to an eligible buyer for a specified period.

A *panel arrangement* involves more than one supplier whereby a standing offer is established with each supplier covering the same or similar goods or services, including a basis for pricing, for a specified period.

Standing offers and panels, routinely referred to as *whole of government contracts*, are a closed procurement arrangement where suppliers are approved to provide eligible buyers with a selection of goods and/or services for a fixed period.

The successful suppliers provide goods and services during the contract period, including any contract extensions, and generally no new suppliers are added during the contract period.

Whole-of-government contracts are mandated and must be used by NSW Government agencies to purchase the goods and services they cover (refer Section 2:01 Plan, Existing arrangements).

Current NSW Government whole-of-government contracts can be viewed on buy.nsw.

Prequalification schemes

Prequalification schemes, also known as Multi-Use Lists, Approved Lists or Procurement Lists, allow suppliers to apply to qualify for business opportunities with government agencies. The NSW Government's Prequalification Schemes provide a more flexible procurement approach to meet the government's sourcing requirements.

Prequalification schemes provide government buyers with access to lists of resources that meet relevant experience and qualification standards. The schemes aim to reduce red tape and streamline the process for agencies to source and engage external expertise, and for suppliers to register for a range of business opportunities.

NSW government prequalification schemes have the advantage of not 'locking-up' a market, with new suppliers able to register at any time, or at least periodically.

See the list of all NSW Government prequalification schemes.

Agency-specific procurement arrangements

Agencies may have specific or unique procurement requirements or need to purchase goods or services on a one-off basis. In these cases, agencies establish their own contracts, standing offers or prequalification schemes to meet their specific needs.

While individual agencies establish and manage these arrangements, they may be made available for other agencies to use via a *piggybacking* clause. *Piggybacking* allows other agencies to use the arrangement, under the existing terms and conditions.

Government procurement solutions

buy.nsw	• buy.nsw is the gateway to NSW Government procurement resources and services • Provides buyer and supplier guidance • Libraries for news, resources, policies, schemes and contracts • Allows online registration to become a buyer or seller of digital products and services
eTendering	• Single entry point for NSW Government buyers and suppliers to advertise and respond to tenders • Upcoming, current and closed business opportunities • Government contract register for awarded contracts ≥$150,000 (inc. GST) • Apply for prequalification schemes
NSW eQuote	• Online quoting system used by agencies to seek quotes from prequalified businesses
NSW eCatalogues	• Online catalogue and purchasing system connecting buyers and suppliers • Allows suppliers to list goods and services under contract • Visible to public, but without pricing information

The Procurement Board is undertaking a refresh of the sector's digital procurement capabilities.

Responsibilities of suppliers

Suppliers to NSW Government need to fulfil a number of requirements in accordance with their agreements, which may include:

- conducting their business relationships in accordance with law and accepted standards of behaviour
- complying where relevant with the NSW Procurement Policy Framework, the Supplier Code of Conduct, the NSW Industrial Relations Guidelines: Building and Construction Procurement and the contracting agency's Statement of Business Ethics
- ensuring goods or services are delivered as per their contract with the buyer
- ensuring accurate documentation including invoices
- completing reporting requirements in relation to orders and contract spend
- participating in performance management activities with the contracting agency
- updating their contact information, product and pricing information on NSW eCatalogues.

Findings of dishonest, unfair, unconscionable, corrupt or otherwise illegal conduct, regardless of whether such conduct occurs in the context of a relationship with the NSW Government, can adversely affect the Government's reputation as a procurer. Such findings can have a range of consequences for individual suppliers, including as serious as exclusion from contracting opportunities with the Government.

Complaints and feedback

The NSW Procurement Board's responsibilities under the *Public Works and Procurement Act 1912* include investigating and dealing with complaints about the procurement activities of agencies.

The NSW Procurement Board's Complaints Management Guidelines describes the process for managing complaints made about procurement, including setting out the circumstances in which the NSW Procurement Board may investigate complaints. It does not apply to complaints of a criminal or corrupt nature which should be referred to the relevant authorities for investigation.

Agencies are responsible for resolving complaints concerning their procurement actions at the appropriate agency level (usually commencing at the area undertaking the procurement), escalating as necessary and referring to external statutory bodies as appropriate.

Complaints unresolved after this process may be referred by the complainant to the Procurement Board, via the NSW Procurement Service Centre. In this instance copies of all correspondence with the agency concerned and all other relevant material will need to be provided.

The Procurement Board will review the material and information supplied by the complainant and the agency before making any decision to investigate a complaint. Where the board considers the agency has dealt with a complaint in an appropriate manner, it will decline to investigate separately.

If a complainant submits a complaint to the board prior to complaining to the relevant agency or where the agency is still considering the complaint, the board will refer the complainant to the agency concerned.

Agencies which are considered not to have complied with requirements will be required to take corrective action in relation to future procurement action. The board may issue directions and policies regarding corrective action.

Complaints handling

An effective complaints management process is integral to the principles of probity and fairness. It demonstrates the agency places a high level of importance on conducting procurement in an honest, fair, accountable and transparent manner. Complaints processes can also assist in diagnosing shortcomings in government procurement and provide a means for continuous improvement of procurement systems and standards of service.

Enforceable procurement provisions

Amendments to the *Public Works and Procurement Act 1912* (PWP Act) came into effect on 29 November 2019. These amendments establish a new complaint process for alleged breaches of PBD 2019-05 Enforceable Procurement Provisions Direction (EPP Direction) relating to international procurement agreements.

An agency needs to identify and deal quickly and effectively with any complaint made under these legislative provisions. The agency will need to:

- suspend all processes involved in the procurement that would adversely affect the complainant's participation in the procurement, unless the agency head certifies that suspending the process is not in the public interest
- investigate the complaint
- take reasonable steps to resolve the complaint
- prepare a written report on the investigation.

A supplier who lodges a written complaint alleging a breach of the EPP Direction relating to international procurement agreements can, after attempting to resolve the matter with the agency, apply to the Supreme Court for an injunction requiring the agency to comply with the EPP Direction. The supplier can also apply to the Supreme Court for a compensation order.

Role of the NSW Procurement Board

The Board does not have a statutory role in considering complaints about alleged breaches of the EPP Direction. These complaints are a matter for the agency, the supplier and, if proceedings are taken, the Supreme Court.

Resources

Obligation	Reference	Classification
Guidelines	Applying the Commitments to Effective Complaint Handling – Guidance for Agencies (NSW Ombudsman)	Recommended
	Six Commitments to Effective Complaint Handling (NSW Ombudsman)	Recommended
	Complaint Management Framework (NSW Ombudsman)	Recommended
	Complaints Management Guidelines (Procurement Board)	Recommended
	Complaint Handling Improvement Program: Commitments Implementation Review (NSW Ombudsman)	Recommended
	Effective Complaint Handling Guidelines, 3rd Edition (NSW Ombudsman)	Recommended
	Managing Unreasonable Complainant Conduct (NSW Ombudsman)	Recommended
	Respectful Treatment (NSW Ombudsman)	Recommended
	Tips for Accessible Complaint Handling (NSW Ombudsman)	Recommended

Contents

Procurement board directions

Section 175 of the *Public works and Procurement Act 1912* grants the Procurement Board authority to issue directions to government agencies regarding the procurement of goods and services of any kind, including construction.

A direction may be issued to government agencies generally or to a particular agency.

Resources

Direction	Title	Date commenced	Review date
2013-01C	Financial assessments	13 November 2013	–
2014-03C	Agency accreditation scheme for construction – threshold for unaccredited work	18 August 2014	–
2014-04C	Construction procurement prequalification schemes for work valued up to $1 million	1 October 2014	–
2014-06	Procurement of goods and services on behalf of other government agencies	1 October 2014	–
2014-07	Recognising suppliers to the Australian Government	1 January 2015	N/A
2015-02	Agency accreditation scheme arrangements	22 July 2015	N/A
2015-03	Radio communications site licence agreement framework	1 September 2015	1 September 2025
2016-03	Construction standards and conformance	6 July 2016	6 July 2019
2016-04	Accessing information about non-government organisations delivering human services	6 July 2016	5 July 2019
2017-03	2017-03 Civil Liability Act 2002 – proportionate liability	1 November 2017	–
2017-04	Procuring human services from NGOs	13 September 2017	13 September 2019
2017-06	International procurement agreements	22 November 2017	–
2017-07	Conduct by suppliers	22 November 2017	22 November 2022
2019-01	Engagement of professional services suppliers	26 March 2019	26 March 2021
2019-02	Telecommunications procurement	29 April 2019	29 April 2024
2019-03	Access to government construction procurement opportunities by SMEs	1 May 2019	1 May 2024
2019-04	Approved procurement arrangements	1 July 2019	1 July 2022
2019-05	Enforceable procurement provisions	29 November 2019	13 September 2024
2020-01	Support for bushfire-affected communities	24 January 2020	28 January 2021
2020-02	Use of Procure IT Framework and increase of the threshold in Core& Contracts	1 June 2020	28 February 2023
2020-03	Skills, training and diversity in construction	1 July 2020	1 March 2023

Section 4

• GLOSSARY •

Aboriginal owned business refers to any business that is an Aboriginal owned business through recognition by an appropriate organisation, such as:

- NSW Indigenous Chamber of Commerce
- an organisation representing Aboriginal owned businesses in another state or territory that is a member of the First Australians Chamber of Commerce and Industry
- Supply Nation.

Aboriginal Participation Plan describes a supplier's commitments under the Aboriginal Procurement Policy or the Aboriginal Participation in Construction (APIC) policy, and how it will meet those commitments.

Aboriginal Participation Strategy describes how an agency is working with Aboriginal owned businesses to identify and develop business and employment opportunities and set measurable targets for Aboriginal participation, through goods and services procurement activities.

Agency refers to a government agency as defined under *s.162 of the Public Works and Procurement Act 1912* and includes a government sector agency (within the meaning of the Government Sector Employment Act 2013), a NSW government agency, and any other public authority that is constituted by or under an act or that exercises public functions. It excludes state owned corporations and local councils.

Agency head is the person who is the chief executive officer, or who exercises the functions of chief executive officer, of a government agency.

Annual Procurement Plan means a planning document that captures all types of procurement initiatives planned by the procurement function, including sourcing, contract management and category management activities. An abridged version is published on NSW eTendering covering planned procurements that may result in an open tender and major or strategic initiatives that may generate procurement.

Arrangement is a description of a contract, standing offer, scheme, or any other form of agreement between a government agency/s and supplier/s, whether or not the arrangement creates a legal relationship between the parties. There are various models of supplier arrangements in place, including:

- contracts between an agency and a supplier
- standing offer agreements between agencies and suppliers, which establish the legal arrangements for contracts relating to the purchase of goods or services
- registration lists and prequalification schemes, under which agencies then enter into contracts.

While these models create different legal relationships between agencies and suppliers, this framework refers to these as 'arrangements' for the sake of simplicity.

Australian disability enterprises (ADEs) are generally not for profit organisations providing supported employment opportunities to people with disability, also known as *disability employment organisations*.

Capital expenditure is expenditure on acquisition, maintenance or improvement of non-current (i.e. if the financial benefit extends beyond the current financial year) fixed assets, such as buildings, equipment or land.

Capital project is a project primarily comprised of fixed assets such as infrastructure, equipment, property developments or operational technology.

Circular Economy is an economy that values resources by keeping products and materials in use for as long as possible.

Competitive neutrality is the principle that government business activities should not enjoy net competitive advantages over their private sector competitors due to their public sector ownership. Competitive neutrality removes potential market distortions and promotes an efficient allocation of resources between public and private businesses.

Conditions for participation are minimum conditions that suppliers must demonstrate compliance with, in order to participate in a procurement process or be included on a procurement list.

Construction means services relating to the construction of buildings or works, including:

- pre-erection works,
- construction work,
- repairs, alterations and restorations.

Covered procurement is a procurement that is covered by PBD-2019-05 Enforceable Procurement Provisions.

Disability employment organisation is an entity that has a principal purpose to provide employment to persons with a disability.

Enforceable Procurement Provision is defined in section 162 of the *Public Works and Procurement Act 1912* and means a provision of a board direction or policy (or a provision of a document referred to in a board direction or policy) that is expressed to be an enforceable procurement provision by the direction or policy.

Environmental Management Plan (EMP) is a site-specific plan that identifies environmental aspects and significant impacts of a construction project, and how contractors will manage environmental performance and conformity with the environmental conditions of the contract.

Environmental Management System (EMS) comprises the elements of an organisation's overall management system that ensure environmental aspects of its activities, products and services, and their significant impacts, are identified and systematically managed.

Expression of Interest (EOI) is the process of seeking the interest of service providers capable of undertaking specific works or services, to provide information on that capability or a detailed proposal to undertake work. It is usually the first stage of a multi-stage tender process.

Goods and services means any type of right, interest or thing, both physical and intangible, which is legally capable of being owned (goods); and work performed by individuals or a group of individuals for others (services). In this framework, *goods and services* excludes any item or activity defined as *construction*, unless otherwise specified.

Hedging is a form of risk management strategy used to limit or offset the probability of loss from fluctuations in prices (e.g. currencies or commodities).

Human services mean the programs, facilities or services provided to meet the health, welfare and social needs of individuals, families and communities. This may include, for example, education, health, and community services provided across NSW, or as defined by the Human Services Data Hub Taxonomy.

Information and Communications Technology (ICT) is a subset of goods and services consisting of information and telecommunications technology, platforms, software, hardware and services.

Inspection and Test Plans (ITPs) record all inspection and testing requirements relevant to a specific process to ensure quality standards are met. ITPs document the procedure to be undertaken and the evidence to be provided (including reviews and verification points) to verify that a work process/product or activity conforms to the specified requirements.

International Procurement Agreement (IPA) is defined in section 162 of the *Public Works and Procurement Act 1912* and means an international agreement that applies to procurements by Australian Governments and covers procurements by NSW agencies.

Limited tender means a procurement (other than through a procurement list) that involves an agency directly inviting one or more suppliers of its choice to make a submissions. Where only one supplier is approached it is sometimes termed a direct negotiation. There are restrictions on the use of limited tendering for covered procurements.

Local Business is a business of any size:

a. with a registered business address in the LGA, or
a. that can demonstrate that it has substantial operations including a local workforce in the LGA

in which a project, program of work or other procurement is to be conducted.

Local government area (LGA) is the area governed by a single local government authority, e.g. a council.

Measures include any law, regulation, policy, procedure, requirement or practice.

Medium business is a business with 20-199 FTEs.

Modern slavery includes any conduct involving the use of any form of slavery, servitude or forced labour to exploit children or other persons taking place in the supply chains of government agencies or non-government agencies.

Non-government organisations (NGOs) means a non-profit organisation that is independent from government. A non-profit organisation is one which 'is not operating for the profit or gain of its individual members, whether these gains would have been direct or indirect'.

Notifiable WHS incident is an incident involving the death of a person, or serious injury or illness of a person or a dangerous incident, (as defined in the WHS Act 2011) that must be notified to SafeWork NSW.

Open approach to market (OAM) is an invitation (such as a notice or post) to participate in a procurement that is publicly published on NSW eTendering.

Open tender is a publicly advertised tender that is open to any interested supplier. Open tenders can include multi-stage procurements where the first stage is an open approach to market.

Panel see procurement panel.

Piggybacking is where one agency has established an arrangement and has made the arrangement available to other agencies.

Preference refers to any law, regulation, policy, procedure, requirement or practice that allows favourable treatment of specified groups of suppliers, e.g. SMEs.

Prequalification Scheme see procurement list.

Principal contractor is a contractor that contracts with an agency as the client and is appointed as principal contractor for nominated work, meaning they are authorised to have management or control of the workplace and discharge the duties of a principal contractor under the WHS Regulation 2017.

Probity is uprightness, honesty, proper and ethical conduct and propriety in dealings, and can be defined as complete and confirmed integrity, uprightness and fairness in a particular process.

Probity advisers act as part of a procurement/sale project team and work contemporaneously with project managers. The principal role of a probity adviser is to provide probity advice and solutions throughout the transaction.

Probity auditors work independently of a project team and are engaged to verify that processes followed during a procurement/sale are consistent with government regulations and best practice principles, primarily after the fact.

Procurement refers to a process that begins with the basic 'make or buy' decision, and then spans the 'whole life' of supplier/construction arrangements. It includes the definition of business needs, designing and implementing arrangements, monitoring and managing contract and supplier performance, and reviewing outcomes to assess the effectiveness of arrangements.

Procurement documentation is provided to suppliers to enable them to understand and assess a procuring agency's requirements and prepare appropriate and responsive submissions. It may include the terms and conditions of the procurement, along with conditions for participation, specifications for the goods and services to be provided, and evaluation criteria.

Procurement list also known as a prequalification scheme, multi-use list or approved list, is a list of suitable suppliers intended to be used more than once for procurements by an agency or agencies. The suppliers are required to meet relevant experience and qualification standards to be engaged for specified business opportunities.

Procurement panel is a panel of suppliers for procurements by an agency or agencies who, following successful tenders, have entered into contracts for inclusion on the panel. A standing offer is established with each supplier covering the same or similar goods or services, with a basis for pricing and for a specified period.

Proposed RFT is an early notification to the market of an upcoming business opportunity or tender but is not a guarantee that the RFT will proceed.

Purchasing is the process of buying or purchasing from an existing procurement arrangement or directly from a supplier.

Quality Management Plan is a project or contract-specific plan that specifies the appropriate quality management policies, processes and standards to ensure the project, contract and/or products conform with requirements and to manage quality risks.

Quality Management System provides a structure, including documentation and processes, which enables the delivery of products and services to be controlled and managed to consistently meet the specified requirements.

Recurrent expenditure is expenditure which does not result in the creation or acquisition of fixed assets (new or second-hand). It consists mainly of expenditure on wages, salaries and supplements, purchases of goods and services and consumption of fixed capital (depreciation).

Regional NSW includes all areas within NSW, outside the Newcastle, Sydney and Wollongong metropolitan areas. A list of regional LGAs is available on buy.nsw.

Regional Supplier is a business of any size:

a. with a registered business address in Regional NSW, or
a. that can demonstrate is has substantial operations including a local workforce in Regional NSW.

Request for Proposal (RFP) is a request to the market to provide preliminary proposals or ideas for a business solution. A second stage may involve short listed tenderers being invited to tender for the contract or, where a best solution is sought, negotiation with the preferred service provider on the final requirements and price.

Request for Tender (RFT) means an invitation, by advertisement or directly, to respond to sourcing requirements by lodging a tender response. It covers all forms of tendering, including an invitation or request for quotation (RFQ) or proposal (RFP), offers, EOI, pre-registration for RFQ or RFP.

Selective tender means a selective procurement method whereby the procuring entity invites only qualified suppliers to submit a tender. Suppliers may be qualified via a procurement list; an EOI, RFP or similar process; or due to some other qualification, accreditation, license or provision.

Small business is a business with 1-19 FTEs, including sole traders and start-ups.

Small or medium enterprise (SME) refers to an Australian or New Zealand based enterprise with fewer than 200 full time equivalent (FTE) employees.

SME and Sustainability Criteria is a non-price-evaluation criterion of at least 15 per cent, which considers how potential suppliers will support the government's economic, ethical, environmental and social priorities. A minimum of 10 per cent of the total non-price criteria must be allocated to SME participation consistent with relevant exemptions in IPAs.

Social enterprise is an entity that is led by an economic, social, cultural, or environmental mission consistent with a public or community benefit and is recognised by an appropriate organisation such as Social Traders.

Submission means a formally submitted response made by a supplier to any invitation (however described) to participate in a procurement, but does not include an application to be included on a procurement list. Common terms for a submission include tender, quote or proposal.

Standard Commercial Framework is a framework to engage business advisory services that provides standard definitions and capped rates for engagement and role types, a discount structure, capped expenses and a target resource mix for engagements.

Standing Offer is an arrangement setting out the terms and conditions, including a basis for pricing, under which a supplier agrees to supply specific goods and services, including construction services, to an eligible buyer for a specified period.

Substantial (FX) Risk is a foreign exchange risk considered to be substantial by Treasury and TCorp based on the size and nature of the exposure, duration and size of the procurement, frequency of the risk occurrence, timing and level of volatility of foreign currency/ies to the A$.

Supplier is an entity or person that provides or could provide goods or services to an agency.

Sustainable procurement is a process whereby organisations meet their needs for products, services, works and utilities in a way that achieves value for money on a whole-of-life basis in terms of generating benefits not only for the organisation, but also to society and the economy, while minimising damage to the environment.

Tenderer is an entity or person that has responded to an RFT or other approach to market.

Unsolicited proposal is an approach to government from a proponent over a commercial proposition, where the government has not requested the proposal. This may include proposals to build and/or finance infrastructure, provide goods or services or undertake a major commercial transaction.

Value is the genuine, estimated value over the proposed term of an acquisition (not a value per annum). Unless specified otherwise, value is exclusive of GST. If an agency undertakes more than one procurement activity with the same supplier for the same goods and services within a reasonable period, the value of all the procurements should be added together.

Whole-of-government arrangement means any procurement arrangement, including whole-of-government contracts and prequalification schemes, under which an agency provides for the purchase of goods or services, including construction, by that agency, all other NSW government agencies and eligible buyers.

Whole-of-government contract means a standing offer or panel arrangement under which an agency provides for the purchase of goods or services, including construction, by that agency, all other NSW government agencies and eligible buyers.

WHS Management Plan (WHSMP) sets out the specific work, health and safety resources, consultation and risk management processes, responsibilities, procedures and practices, for a particular construction project/ contract.

WHS Management System (WHSMS) is the overall management system, including organisational structure, planning activities, responsibilities, practices, procedures, processes and resources, for developing, implementing, achieving, reviewing and maintaining the supplier's WHS policy, and so managing WHS risks.

Document control

Document approval

Approved by the Procurement Board: 20 February 2019

Administrative updates approved by NSWCPO: 25 June 2020

Document version control

Version	Status	Date	Prepared by	Comments
1.0	Final	20 February 2019	Emma Cooper	Initial version approved by Procurement Board
1.1	Final	1 July 2019	Emma Cooper	Administrative and approved policy updates. Includes board directions and policies approved after Procurement Board approval and prior to commencement date of 1 July 2019: • PBD-2019-01 Engagement of Professional Services Suppliers, issued 26 March 2019 • PBD-2019-02 Telecommunications Procurement, issued 29 April 2019 • PBD-2019-03 Access to Government Construction Procurement Opportunities by SMEs, issued 1 May 2019 • PBD-2019-04 Approved Procurement Arrangements, issued 1 July 2019 • Government Resource Efficiency Policy, revised 21 February 2019 • Circular Economy Policy Statement, released 25 February 2019 • TPP19-03 Recurrent Expenditure Assurance Framework, issued 31 January 2019 • Replace references to Procurement (Enforceable Procurement Provisions) Direction 2019 with PBD-2017-06 International Procurement Agreements, as new Direction not yet in effect. • Adds Construction Industry Leadership Forum (CILF) Notes, approved by Procurement Board 5 June 2019.

Version	Status	Date	Prepared by	Comments
1.2	Final	1 October 2019	Emma Cooper	Incorporated policy updates and omissions identified after release of version 1.1: • PBD-2019-05 Enforceable Procurement Provisions, released 16 September 2019, effective date 29 November 2019 • Public Works and Procurement Regulation 2019, replacing 2014 Regulation that was remade 1 September 2019 • DFSI-2019-01 NSW Government Operational Communications Strategy, released 15 July 2019. Added: • Bid Cost Contributions Policy for construction projects valued over $100 million, released December 2018 • Construction and demolition waste management requirements per the *Protection of the Environment Operations Act 1997*, Standards for Managing Construction Waste in NSW, and Construction and Demolition Waste Management Toolkit • TC12-12 Mandatory use of the TMF for all Government insurance requirements, released 3 May 2012 • TC16-11 Mandatory principal arranged insurance for all major capital works projects, released 15 August 2016.
1.3	Final	3 December 2019	Emma Cooper	Incorporate requirements of PBD-2019-05 Enforceable Procurement Provisions: • Replaced all references to the withdrawn PBD-2017-05 International Procurement Agreements with PBD-2019-05 • Updated: – Section 1:02 Fair and Open Competition, p. 10 – Section 2:01 Plan: Creating a new procurement arrangement, pp. 43 - 45 – Section 2:02 Source: Tender documents, pp. 53-56 – Section 2:02 Source: Notifying and briefing the market, pp. 70-73, 75 – Section 2:02 Source: Negotiation and contract award, pp. 76.

Version	Status	Date	Prepared by	Comments
1.4	Final	16 March 2020	Emma Cooper	• Updated requirements and references to new editions of the construction guidelines released December 2019, Sections 2:02 Source and 2:03 Manage: – WHS Management Guideline, pp. 60, 67, 80 and 100 – Environmental Management Guideline, pp. 61, 67, 81 and 100 – Quality Management Guideline, pp. 62, 67, 81 and 100. • Procurement Board Direction 2020-01 Support for bushfire affected communities added to list of board directions, p. 114. • Updated payment times for small business on pages 16 and 95 to reflect the requirement to pay invoices from registered small businesses within five business days as of 1 January 2020, in accordance with the Faster Payment Times Policy. • Added references to Interactive tendering guidelines released February 2020: – Section 1:04 Innovation, p. 21 – Section 2:01 Plan: Creating a new procurement arrangement, p.46 – Section 2:02 Source: Notifying and briefing the market, p. 72. • Added references to the Supplier Code of Conduct released February 2020: – Section 1:02 Fair and open competition, p. 11 – Section 2:02 Source, Tender documentation, p. 56 – Section 2:03 Manage: Contract and supplier management, p.95.
1.5	Final	1 July 2020	Emma Cooper	• The new NSW government procurement website, buy.nsw, went live in April 2020. References and links have been updated to the new site. • PBD 2020-01 Support for bushfire affected communities was amended 4 May 2020 to include support for flood-affected communities. Requirements have been added to: – Section 2:01 Plan: Selecting a procurement method, p. 39. • PBD 2020-02 Use of Procure IT Framework and increase of the threshold in Core& Contracts came into effect 1 June 2020, replacing PBD 2018-02. References have been amended throughout the document.

Version	Status	Date	Prepared by	Comments
1.5 (cont.)	Final	1 July 2020	Emma Cooper	• PBD 2020-03 Skills, training and diversity in construction came into effect 1 July 2020, replacing PBD 2017-05 Construction training and skills development. Updated: – Section 1:05 Economic development, social outcomes and sustainability, p. 26 – Section 2:01 Plan: Creating a new procurement arrangement, p. 48 – Section 2:02 Source: Additional evaluation criteria, pp. 65-66 – Section 2:02 Source: Contract requirements, p. 70 – Section 2:03 Manage: Additional requirements for construction contracts, p. 100. • Amended references to the "SME or Regional First" initiative in the *SME and Regional Procurement Policy* to reflect changes made January 2020 that provide additional support for drought-impacted regional businesses: – Section 2:01 Plan: Selecting a procurement method, p. 41. • Added information on engaging social enterprises: – Section 1:05 Economic development, social outcomes and sustainability, p. 25 – Section 2:02 Source: Additional evaluation criteria, p. 64 – Glossary, p. 121. • Updated references and links to the revised *Infrastructure Investor Assurance Framework* released February 20200 by Infrastructure NSW. • Added references to ICAC guideline, *Supplier due diligence: a guide for NSW public sector agencies* released June 2020: – Section 1:02 Fair and open competition, p.11 – Section 2:02 Source: Tender documentation, p.57 – Section 2:03 Manage: Contract and supplier management, p.96. • The Department of Customer Service archived DFSI Circular 2015-02 Efficient Electronic Payment Methods on 30 March 2020. Requirements relating to supplier payments (p.15 and p.96) have been removed.

Review Date

This policy is updated on a quarterly schedule to include new and amended policies.

The policy will be formally reviewed by July 2021.

It may be reviewed earlier in response to post-implementation feedback from agencies, the Procurement Leadership Group, the Construction Leadership Group and the Procurement Board.

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