



CONTRACTOR PREQUALIFICATION AND BEST PRACTICE  
ACCREDITATION SCHEME

## SCM1461 Scheme Conditions

---

For construction and related works valued \$1M to \$9M

January 2023



Published by Department of Regional NSW

[Buy.nsw.gov.au](http://Buy.nsw.gov.au)

Title: SCM1461 Scheme Conditions

Subtitle: For construction and related works valued \$1M to \$9M

Department reference number: Doc20/741168

#### **More information**

Contact the NSW Procurement Service Centre

- Telephone: 1800 NSW BUY (1800 679 289)
- Email: [nswbuy@treasury.nsw.gov.au](mailto:nswbuy@treasury.nsw.gov.au)

---

© State of New South Wales through Department of Regional NSW 2020. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Regional NSW as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (October 2020) and may not be accurate, current or complete. The State of New South Wales (including the Regional NSW), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

## What's changed?

**From 29 November 2020 NSW Government Agencies can no longer use Scheme SCM1461 for procurements above \$9M ex GST as a result of the introduction of the Enforceable Procurement provisions by the NSW Procurement Board.**

To facilitate procurements above \$9M ex GST, a separate Procurement List was established. Agencies are encouraged to use that Procurement List for procuring General Construction Works above \$9M.

This Scheme was amended to:

- Only operate between \$1M and \$9M
- Include a new work category: Demolition Works. Suppliers are encouraged to submit a new application to become prequalified for this category
- Updated guidelines and conditions
- Updated performance management and reporting

## Transition Process

### **Suppliers currently prequalified under SCM1461 for works between \$9M and \$10M**

Suppliers currently prequalified under SCM1461 for works between \$9M and \$10M are **required to submit an Application to be included on the Procurement List**, if desired by the Supplier.

**If such a Suppliers does not submit an Application for inclusion on the Procurement List Agencies will no longer be able to include the Supplier in procurements above \$9M ex GST from 29 November 2020.**

However, the Supplier will continue to be prequalified under SCM1461 and Agencies can continue to include the Supplier in procurements above \$1M and below \$9M.

### **Suppliers currently prequalified under SCM1461 for works above \$10M**

Suppliers currently prequalified under SCM1461 for works above \$10M have already been contacted by the NSW Government with an invitation to **automatically transition to the Procurement List**. No immediate action is required from these Suppliers unless they disagree with the Procurement List Conditions and would like to opt-out of the automatic transition to the Procurement List. For clarity Suppliers automatically transitioning to the Procurement List **will not be required to submit a new Application**. Suppliers will be required to update their Supplier information by 31 August 2021.

Suppliers will be required to update their Supplier information by 31 August 2021.

### **Suppliers currently prequalified under SCM1461 for works from \$1M to 9M**

**No immediate action is required from these Suppliers and they do not need to submit a new Application**. These Suppliers will continue to be prequalified under SCM1461 and Agencies can continue to include the Supplier in procurements above \$1M and below \$9M.

## Where to start

### Buy.NSW

All relevant documents related to SCM1461 can be found on Buy.NSW at <https://buy.nsw.gov.au/schemes> including:

- Scheme Conditions (this document)
- Guidelines for Applicants
- Guidelines for Agencies.

### Terms and definitions

Some terms and words used in this document have a defined meaning.

Refer to Attachment A to identify the terms and their meaning.

### Application to be included on the Scheme

The NSW Government invites Suppliers to make an application to be included on this Scheme.

All Applications must be made through the NSW Government Supplier Hub system. Guidelines for Applicants have been published with additional details on how to register and apply.

- Before commencing the Application process, Applicants must register on the Supplier Hub website using the following link: <https://suppliers.buy.nsw.gov.au/login>
- Once registered, Applicants must use the online Application form available at: <https://www.tenders.nsw.gov.au/?event=public.scheme.show&RFTUUID=BF842AD6-BCF9-5768-2D5427E47C7328B9>

### Agencies seeking tenders from Suppliers

Agencies seeking tender submissions for a specific project should commence their search in [eTendering Admin Domain](#). Guidelines for Agencies have been published with additional information.

### Enquiries

The government Agency responsible for this Scheme can be contacted for further information and enquiries at:

Category Manager Construction  
Public Works Advisory (PWA), Department of Regional NSW  
email: [Construction.suppliers@pwa.nsw.gov.au](mailto:Construction.suppliers@pwa.nsw.gov.au)  
4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150  
Locked Bag 5022, Parramatta NSW 2124

# Contents

<b>What's changed?</b> .....	<b>1</b>
<b>Transition Process</b> .....	<b>2</b>
Buy.NSW .....	3
Terms and definitions .....	3
Application to be included on the Scheme .....	3
Agencies seeking tenders from Suppliers .....	3
Enquiries .....	3
<b>1 SCM1461 Overview</b> .....	<b>6</b>
1.1 General Construction Works between \$1M and \$9M .....	6
1.2 NSW Government Construction Pipeline of Work .....	6
1.3 Out of scope .....	6
1.4 Best Practice Accreditation.....	7
1.5 Application Process .....	7
<b>2 Work Categories and Contract Systems</b> .....	<b>9</b>
2.1 Building Works.....	9
2.2 Heritage Building Works .....	9
2.3 Modular Building Works.....	9
2.4 Fitout and Refurbishment .....	9
2.5 Civil Works.....	9
2.6 Water Infrastructure .....	9
2.7 Wastewater Infrastructure .....	9
2.8 Demolition Works .....	9
2.9 Contract systems.....	10
<b>3. Application to be included on the Scheme</b> .....	<b>11</b>
3.1 Conditions for participation .....	11
3.1.1 Legal capacity .....	11
3.1.2 Financial capacity.....	11
3.1.3 Commercial ability .....	13
3.1.4 Technical ability.....	13
3.1.5 Best Practice Accreditation .....	14
3.1.6 Additional information.....	14
3.2 Assessment of Applications.....	14
3.3 Outcome of the Application .....	15
<b>4 Suppliers included on the Scheme</b> .....	<b>16</b>
4.1 Bidding for Work .....	16
4.2 No Guarantee of Work.....	16
4.3 Performance management .....	16
4.3.1 Supplier's responsibilities in performance management .....	16
4.3.2 Government's responsibilities in performance management.....	17

4.4	Changes to Supplier's status.....	18
4.4.1	Changes to Supplier's circumstances .....	18
4.4.2	Changes to ABN.....	18
4.5	Reporting .....	19
4.5.1	Annual check of financial viability .....	19
4.5.2	Annual reporting .....	19
4.6	Suspension and Removal from Scheme .....	19
4.6.1	Temporary suspension from Scheme .....	19
4.6.2	Removal from Scheme.....	20
<b>5</b>	<b>Reviews and Appeals .....</b>	<b>21</b>
5.1	Review.....	21
5.2	Appeals.....	21
<b>6</b>	<b>Other Terms and Conditions .....</b>	<b>22</b>
6.1	Applicant's acknowledgment .....	22
6.2	Confidentiality and Exchange of Information .....	22
6.3	Publicity and use of NSW Government logo by Suppliers.....	22
6.4	Disclosure.....	23
6.5	Disclaimer.....	23
6.6	Precedence of documents.....	23
6.7	Expiry of the Scheme .....	23
<b>7</b>	<b>Review and Development of the Scheme.....</b>	<b>24</b>
<b>8</b>	<b>NSW Procurement Policy Framework .....</b>	<b>25</b>
8.1	Procurement Board Directions .....	25
8.2	Enforceable Procurement Provisions .....	25
8.3	NSW Government Action Plan: A ten point commitment to the construction sector .....	25
8.4	NSW Government Supplier Code of Conduct .....	25
8.5	Financial Assessment.....	26
8.6	Small and Medium Enterprise (SME) and Regional Procurement.....	26
8.7	Aboriginal Procurement Policy (APP) .....	26
8.8	Skills and training in construction .....	27
8.9	Modern Slavery Legislation .....	27
8.10	Disability organisations .....	27
	<b>Appendix A - Terms and definitions .....</b>	<b>28</b>

# 1 SCM1461 Overview

## 1.1 General Construction Works between \$1M and \$9M

This Scheme provides a mechanism for the NSW Government, local councils and universities to procure General Construction Works between \$1M and \$9M ex GST.

Applications are continuously open, and the Scheme is set to expire on 31 December 2025.

This Scheme may be used to procure the following Construction Services:

- **Building Works:** Multi-trade building works for new buildings and additions to existing buildings.
- **Heritage Building Works:** include restoration and conservation works and or associated stonemasonry, carving & fixing, roofing, carpentry, plastering and painting
- **Modular Building Works:** include portable buildings, prefabricated buildings, modules or sections manufactured off-site and amenable to on-site expedited delivery or modular assembly.
- **Fitout and Refurbishment:** Fitout and refurbishment work, as well as the final preparation of internal areas for occupation by the client in new and existing buildings.
- **Civil Works:** For civil engineering works including excavation and bulk earth works, minor roads and related works.
- **Water Infrastructure:** include reservoirs, dams and or associated pipelines, pumping stations, balance tanks, surge tanks, storage tanks and discharge structures
- **Wastewater infrastructure:** include sewage treatment plants and or associated pipelines and pumping stations
- **Demolition Works:** Includes demolishing or dismantling a structure or part of a structure that is either load bearing or related to the physical integrity of the structure.

Further details on the Work Categories are provided at section 2.

## 1.2 NSW Government Construction Pipeline of Work

The NSW Government is committed to the continued transparency of its project pipeline, to attract investment and early participation in the design, construction, management and operation of major infrastructure projects across the whole of NSW.

Applicants and Suppliers are encouraged to view detailed information about upcoming projects on the following websites:

- <https://www.infrastructure.nsw.gov.au/industry/construction-industry/nsw-infrastructure-pipeline/>
- <https://www.tenders.nsw.gov.au/?event=public.APP.list>

## 1.3 Out of scope

Construction Services not explicitly listed at section 2 are out of scope for this Scheme.

Applicants are to note that other mechanisms exist for the NSW Government to procure the services listed at section 2 in addition to this Scheme, including:

- Open approach to market (in accordance with Part 4 of the EPP)



- Procurement List for General Construction Works above \$9M
- [SCM5861 Land and Housing Residential Building Works](#)
- Health Infrastructure Construction Services Contractor Procurement List HI19543
- [SCM0256 General Construction Works up to \\$1M Scheme](#)

Procurements from government bodies that are not listed at Schedule 1 of the EPP may also use procurement mechanisms other than this Scheme.

## 1.4 Best Practice Accreditation

The Scheme caters for two levels of Supplier capability: Prequalified Contractors and a higher level of capability of Best Practice Accredited Contractors.

- **Prequalified Contractors** are Suppliers who have been included on the Scheme as they sufficiently demonstrated their eligibility against the Conditions of Participation outlined in sections 3.1.1 to 3.1.3 of this document
- **Best Practice Accredited Contractors** have demonstrated their eligibility against sections 3.1.1 to 3.1.3 of this document and also section 3.1.5. Best Practice Accredited Contractors may receive preference over non-accredited contractors for selective tendering opportunities for contracts valued from \$2.5M. Additionally, within GC21 contracts, Best Practice Accredited Contractors may require a different, potentially lower, level of (financial) security to the Principal in the form of unconditional undertakings.

To obtain Best Practice Accreditation, an Applicant needs to first become a Prequalified Contractor with an Upper Contract Value above \$2.5M. Once included on the Scheme, the Supplier will need to conduct a self-assessment to determine whether it is able to meet the requirements for Best Practice Accreditation. Where the Supplier considers it is able to meet these requirements, the Supplier may then submit an Application for Best Practice Accreditation.

The Agency responsible for this Scheme may downgrade a Supplier's Best Practice Accreditation to that of Prequalified Contractor if it considers that a Supplier has:

- demonstrated unsatisfactory tendering performance with tenders under the Scheme, for example declining tendering opportunities without providing valid reasons, accepting a tendering opportunity but not lodging a tender, lodging late tenders or lodging uncompetitive tenders
- experienced an adverse change in capacity; or
- experienced an adverse change in business status.

For more information refer to [guidance for Best Practice Accreditation at section 5 of the Scheme Applicant Guidelines](#).

## 1.5 Application Process

The NSW Government invites Suppliers to make an Application to be included on the Scheme.

The application process is described in detail at section 3, including the conditions for participation that Applicants must satisfy for inclusion on the Scheme.

All Applications must be made through the NSW Government Supplier Hub. Guidelines for Applicants have been published with additional details on how to register and apply.

- Before commencing the Application process, Applicants must register on the Supplier Hub website using the following link: <https://suppliers.buy.nsw.gov.au/login>
- Once registered, Applicants must use the online Application form available at: <https://www.tenders.nsw.gov.au/?event=public.scheme.show&RFTUUID=BF842AD6-BCF9-5768-2D5427E47C7328B9>

## 2 Work Categories and Contract Systems

### 2.1 Building Works

This category is for multi-trade building works for new buildings and additions to existing buildings. Includes some design coordination and design management and may also involve minor heritage works, associated civil works and elements of fitout and refurbishment work, as well as the final preparation of internal areas for occupation by the client in new and existing buildings.

### 2.2 Heritage Building Works

Heritage building include restoration and conservation works and or associated stonemasonry, carving & fixing, roofing, carpentry, plastering and painting.

### 2.3 Modular Building Works

Modular building include portable buildings, prefabricated buildings, modules or sections manufactured off-site and amenable to on-site expedited delivery or modular assembly.

### 2.4 Fitout and Refurbishment

This category is for fitout and refurbishment work. It further includes the final preparation of internal areas for occupation by the client in new and existing buildings.

### 2.5 Civil Works

This category is for civil engineering works including excavation and bulk earth works, minor roads and related works, and drainage works.

### 2.6 Water Infrastructure

Water supply infrastructure include reservoirs, dams and or associated pipelines, pumping stations, balance tanks, surge tanks, storage tanks and discharge structures.

### 2.7 Wastewater Infrastructure

Wastewater infrastructure include sewage treatment plants and or associated pipelines and pumping stations.

### 2.8 Demolition Works

Demolition work includes demolishing or dismantling a structure or part of a structure that is either load bearing or related to the physical integrity of the structure. This category includes the removal of hazardous materials other than asbestos.

Total or partial demolition of buildings/structures can be potentially dangerous. Suppliers undertaking this work are therefore required to hold applicable licenses. Under the NSW Work Health and Safety (WHS) Regulation 2017, there are two types of demolition licences:

- a demolition license (DE1)
- restricted demolition license (DE2)

Suppliers of this category in SCM1461 must possess one of the above licences issued by SafeWork NSW and can be engaged as the Principal Contractor under the WHS legislation.

## 2.9 Contract systems

Procuring entities may approach Suppliers for the provision of services under the following contract systems:

- **Construction (C):** The Supplier may be responsible for completing the Principal's design and carrying out design documentation and design coordination to the extent specified and for construction using designs and documentation prepared by the Principal. The Supplier's design obligation may include preparation of fabrication drawings and may include completion of other design details. This includes the contract system often called Design Development and Construct.
- **Design and Construct (DC):** The Supplier is responsible for a significant part of the design, design development, and documentation and design coordination, as well as construction.

## 3. Application to be included on the Scheme

### 3.1 Conditions for participation

This section contains the conditions for participation that Applicants must satisfy to be included on the Scheme.

#### 3.1.1 Legal capacity

Applicants must have the legal capacity to enter into contracts with the NSW Government. The legal capacity of the Applicant will be assessed based on the following criteria:

- Applicant has a current Australian Business Number (ABN)
- Applicants cannot be a Trust. Suppliers trading under a Trustee company arrangement (e.g. Trustee for the Smith Family Trust) are eligible to apply if, under the terms of the trust deed, they have power to enter into a contract on behalf of the trust. Trusts (e.g. Smith Family Trust) are not eligible for prequalification, as they cannot enter into a contract for services with an agency
- Applicants are not applying for the same category of work and Upper Contract Value as any already included Supplier who is a related, associated or subsidiary business entity of the Applicant
- Applicants are not a joint venture applying for the same category of work or Upper Contract Value as any of the parties to the joint venture
- Agreement to the NSW Government Supplier Code of Conduct (refer section 8.4)
- Whether, on reasonable grounds, there is an unacceptable level of risk arising from legal proceedings (including fines) issued or underway against the Applicant in the two years preceding the Applicant's application.

#### 3.1.2 Financial capacity

Applicants must have the financial capacity to deliver contracts for the NSW Government. The financial capacity of the Applicant will be assessed based on the following criteria:

- Financial viability of the entity that is the Applicant is proven through financial statements for the previous two financial years
  - Applicants must provide audited financial statements where available. If the Applicant is not required to prepare audited financial statements, statutory accounts which have been prepared by an external accountant are to be provided
  - Financial statements must represent same ABN as provided for the Applicant. Financial statements for any other organisation than the Applicant (e.g. parent company) **will not be accepted**, except when the Applicant is covered by an ASIC Deed of Cross Guarantee
  - Financial statements must be prepared following internationally recognised Accounting Standards, such as IFRS, US-GAAP, or AASB
  - The Applicant should be able to demonstrate all of the following:

- Net Tangible Assets (Total Assets less Total Liabilities less intangibles) of not less than 5% of the Upper Contract Value sought
  - Current Ratio (ratio of current assets to current liabilities) in excess of 1.
  - Working Capital in excess of 10% of the Upper Contract Value sought
  - a minimum annual turnover of \$1 million.
- The total contract value of a project delivered over the past two years.

Based on the information provided above, the NSW Government will determine an Upper Contract Value to which the Supplier will be able to deliver work to the NSW Government once included on the Scheme and if successful in a subsequent submission to an Agency. The Upper Contract Value represents the potential value of the largest single contract, or the total value of smaller contracts for which the Supplier may be considered for tendering opportunities on an annualised basis.

The Upper Contract Value will be the lesser of \$9M, the financial capability and maximum contract value of a project delivered over the past two years.

*Example:1*

Financial Capacity assessed by the NSW Government through an external assessor = \$8M

Scheme SCM1461 operates below \$9M

Project 1: contract value at \$7M

Project 2: contract value at \$6.5M

The Applicant will be included on the Scheme to \$9M and will have a financial threshold of \$7M

*Example:2*

Financial Capacity assessed by the NSW Government through an external assessor = \$5M

Scheme SCM1461 operates below \$9M

Project 1: contract value at \$7M

Project 2: contract value at \$10M

The Applicant will be included on the Scheme to \$9M and will have a financial threshold of \$5M

Applicants and Agencies should note that the Upper Contract Value is only indicative, as it represents the Applicant's financial capacity at a particular point in time. NSW Government will require an updated financial assessment to be undertaken prior to the award of any contract, at regular periods during a contract and while included on the Scheme.

The NSW Government will not include on this Scheme a Business Name, Trust or other entity that is under any form of external administration.

### 3.1.3 Commercial ability

Applicants must have the commercial ability to deliver contracts for the NSW Government. The commercial ability of the Applicant will be assessed based on the following criteria:

#### **Ability to work collaboratively**

- At least two of the Key Personnel nominated by the Applicant must have completed [GC 21 cooperative based contracting training](#), and can provide evidence of the course attended
- At least two of the Key Personnel nominated by the Applicant have completed training relating to Conflict Resolution and can provide evidence of the course attended
- At least two of the Key Personnel nominated by the Applicant have completed training relating to Alternative Dispute Resolution and can provide evidence of the course attended

#### **Quality Management System (QMS)**

- Demonstrated that adequate QMS systems are in place, including through accreditation/certifications such as:
  - Certification to AS/NZS ISO 9001 through an organization listed by [JAS-ANZ](#).
- Demonstrated that QMS systems are being followed and complied with through the submission of the following documents:
  - Two Inspection and Test Plans (ITP) developed within the past 2 years and evidence that they have been implemented on projects.

#### **Workplace Health and Safety (WHS) systems**

- Demonstrated that adequate WHS systems are in place, including through accreditation/certifications such as:
  - Certification to AS/NZS ISO 45001 through an organization listed by [JAS-ANZ](#), or
  - Current accreditation with the Office of the Federal Safety Commissioner.
- Demonstrated that WHS systems are being followed and complied with provide for two contracts completed in the last 2 years one of the following documents:
  - Third party WHS Audit Report, or
  - Site Safety Inspection Report signed off by WHS Manager, or
  - Site Safety Corrective Action Report signed off by WHS Manager.

### 3.1.4 Technical ability

Applicants must have the technical ability within the nominated work categories to deliver contracts for the NSW Government. The technical ability of the Applicant will be assessed based on the following criteria:

- Demonstrated at least two years' of relevant experience delivering contracts within the categories nominated
- Provided two client referees and performance reports for fully completed contracts delivered during the last three years for each nominated Work Category including to Government agencies within Australia.

### 3.1.5 Best Practice Accreditation

Suppliers applying for Best Practice Accreditation have additional requirements to demonstrate. A Supplier's eligibility for Best Practice Accreditation will be assessed based on the following criteria:

- Whether the Applicant has been prequalified and included as a Supplier on SCM1461 with an Upper Contract Value exceeding \$2.5M
- Whether the Applicant has achieved a CPR benchmark score of 65% for all contracts procured through the NSW Government Procurement System for Construction for all work in progress within the last three years
  - Alternately, where there is insufficient work history with the NSW Government, the Applicant is to be able to provide four (4) Client Referee Reports (based on the NSW Government template) or four (4) Contractor Performance Reports (based on the performance reports of other NSW Government clients) for work fully completed within the last three (3) years which meet the 65% Best Practice Performance benchmark.
- Applicant is to be able to provide evidence of meeting the Best Practice Matrix criteria including ability to provide extracts of relevant policy, procedures, communications, training and operational records.

### 3.1.6 Additional information

The following additional information will be asked of Applicants for informational purposes only and do not form part of the conditions of participation

- Business Name
- Business Address
- Contact Name and Details
- Years in operation
- Any areas serviced in Australia
- Any areas serviced in NSW
- Number of full-time equivalent employees
- Whether the Applicant is an Aboriginal owned business (refer section 8.7)
- The Applicant's commitment to the Skills and Training Policy (refer section 8.8)
- Whether the Applicant is a disability employer (refer section 8.10)
- Whether the Applicant is covered by the Modern Slavery Act and its compliance with this Act (refer section 8.9).

## 3.2 Assessment of Applications

The government Agency responsible for this Scheme will assess the Application based on the conditions for participation that are specified in section 3.1.

The following methods may be used to verify that the Applicant satisfies these conditions of participation:



- A lookup on the Australian Business Register (ABR) and Australian Securities and Investments Commission (ASIC) websites to validate information including the ABN, Business Name, Business Address provided by the Applicant
- Calculation and assessment of financial benchmarking ratios, including Net Tangible Assets (Total Assets less Total Liabilities less intangibles), Current Ratio (ratio of current assets to current liabilities), Working Capital and annual turnover
- Engagement of an external assessor to verify the financial viability of the Applicant
- Evaluation of the Applicant's commercial and technical abilities on the basis of the information provided by the Applicant about its business activities
- Referee checks to validate the nominated project experience and key personnel
- Checks to validate the accuracy of any certificates provided, such as for qualifications, licenses, certifications, and accreditations.

### 3.3 Outcome of the Application

If the government Agency responsible for this Scheme is satisfied that the Applicant meets the conditions for participation of the Scheme, it will include the Supplier on the Scheme. A notification of appointment will be issued to the Applicant.

The government Agency responsible for this Scheme will promptly notify the Applicant if it rejects its Application. Debriefs of unsuccessful Applications are available upon request and will be provided in writing outlining the reasons the Application was unsuccessful.

If an Applicant is not satisfied with the decision made by the NSW Government regarding its Application, the Applicant may request a formal review or appeal the outcomes of the review.

For further information about review, appeals and complaints refer to section 5.

## 4 Suppliers included on the Scheme

### 4.1 Bidding for Work

Only Suppliers, or a limited number of Suppliers, included on the Scheme may receive invitations from a NSW Government Agency to make submissions relating to procurements for which the Scheme was established (i.e. within the Work Categories listed at section 2).

Agencies inviting submissions may only approach a limited number of Suppliers on the Scheme as it may be inefficient for both, the Agency and the Suppliers, to invite all eligible Suppliers to participate in every procurement.

At a minimum the Agency will seek submissions from three Suppliers.

Agencies may consider inviting Suppliers who had previously expressed interest with the Agency for a particular procurement listed in the Agency's annual procurement plan.

### 4.2 No Guarantee of Work

A Supplier's inclusion on the Scheme does not guarantee:

- Continuity of the inclusion on the Scheme,
- Receipt of opportunities to make submissions; or
- That engagements or work of any kind or quantity will be offered.

### 4.3 Performance management

#### 4.3.1 Supplier's responsibilities in performance management

Suppliers should have in place a system for the monitoring, tracking and management of the Supplier's own performance on contracts procured through the Scheme.

The system is to enable the Supplier to:

- Manage the receipt and storage of completed and signed copies of Contractor Performance Reports (CPR) provided by the Client's Project Manager. The Supplier is to request the completion of any outstanding or incomplete CPRs from the Client's Project Manager. (Note that the Client's Project Manager is required to promptly provide copies of CPRs to the Supplier on request)
- Review performance status and trends of all contracts at an executive level including analysis of performance status and trends on individual contracts
- Identify performance issues requiring resolution and or improvement including deciding on and implementing corrective actions
- Review of Supplier's own system for performance monitoring, tracking and management by the executive including the implementation of improvements.

### 4.3.2 Government's responsibilities in performance management

Suppliers included on the Scheme may be subject to a process of continuous monitoring and review in all matters related to the Scheme including the Supplier's performance and project outcomes.

The monitoring is not exclusive to work arranged by the NSW Government. For example, if the Supplier was found guilty of professional misconduct, this will be considered by the NSW Government even if the misconduct occurred in a different jurisdiction. Government agencies have agreed to exchange information on the performance of Suppliers.

This monitoring may include, but may not be limited to:

#### Legal Capacity

- Ethical business practices, including compliance with NSW Government Supplier Code of Conduct
- SafeWork NSW notices or on-the-spot fines issued to the Supplier on any of its contracts
- Convictions or prosecutions for workplace safety or environmental law breaches
- If the Supplier has been found guilty of professional misconduct
- Failure to obey an adjudicator's determination under Building and Construction Industry Security of Payment Regulation 2020 (NSW), subject to other legal rights
- If the Independent Commission Against Corruption (or an equivalent body in a jurisdiction in Australia), within the previous 10 years, has made a finding or has been of the opinion that the supplier has engaged in corrupt conduct
- If the Supplier has made one or more false declarations

#### Financial Capacity

- Financial Performance, specifically if the Supplier remains a financially viable business
- Whether the supplier is bankrupt or insolvent.

#### Commercial Ability

- Tendering Performance on submissions including whether the Supplier has:
  - Declined submission opportunities offered without providing valid reason
  - Failed to make a submission without providing any valid reason after having accepted the submission opportunity
  - Made late submissions
  - Made qualified, non-complying or uncompetitive submissions.
- The preparation of proper and conclusive accident and incident reports on any of the Supplier's contracts in NSW
- The level of appropriateness of corrective actions implemented by the Supplier following the report of a serious WHS event on the Supplier's sites

- Results of any Quality Assurance Audit or WHS Management System Audit conducted for or on behalf of any NSW Government Agency or by any properly credentialed Auditor or Auditor group
- The Supplier's compliance with its own business management systems, and whether these systems are kept updated in line with certification/accreditation requirements
- Aboriginal Participation in Construction and whether the Supplier achieves the targets stated in the related policy documents (if applicable)
- Training and Development and whether the Supplier complies with the requirements described in section 8.8

### Technical Ability

- Project outcomes of projects delivered by the Supplier
- Client satisfaction on projects delivered by the Supplier
- Contractor Performance Reports (CPR)

## 4.4 Changes to Supplier's status

### 4.4.1 Changes to Supplier's circumstances

Suppliers must immediately inform the government Agency responsible for this Scheme of any substantial change in their financial capacity, technical capacity, capability, ownership status, contact details or address.

In case the ABN of the Supplier has changed, the Supplier needs to re-apply for inclusion in the Scheme as a new entity.

Suppliers must advise of a change in status by writing with full details to:  
[construction.suppliers@pwa.nsw.gov.au](mailto:construction.suppliers@pwa.nsw.gov.au)

### 4.4.2 Changes to ABN

Any Supplier that changes its ABN is deemed to be a new entity. As such:

- The Supplier will be removed from the Scheme (as it is no longer eligible to contract with government using the registered ABN)
- The new entity must re-apply for inclusion in the Scheme.
- If a Supplier changes its name but ABN remains the same, then will need update their profile in the eTendering System

## 4.5 Reporting

### 4.5.1 Annual check of financial viability

Suppliers are required to support annual checks of their financial viability. This may include submitting audited financial statements and supporting a third party in their assessment of the Supplier's financial capacity.

### 4.5.2 Annual reporting

By 31 August each year, Suppliers must submit a report for the period 1 July of the previous year to 30 June of the current year, containing:

- Confirmation or amendment of the Supplier's contact details
- Number of invitations to submissions/RFQs the Supplier received off this Scheme
- Number of submissions/bids made by the Supplier
- Number of contracts awarded to Supplier
- Value of contracts awarded to Supplier.

## 4.6 Suspension and Removal from Scheme

### 4.6.1 Temporary suspension from Scheme

The NSW Government may suspend a Supplier from the Scheme for any non-compliance with the conditions set out in this document, noting:

- The NSW Government is not obliged to advise the Supplier before deciding to suspend
- As soon as practicable, the NSW Government will provide information to the Supplier about the reasons for the suspension and the actions required
- The suspension will remain in force until the Supplier addresses the reasons for the suspension
- Invitations to submissions will not be offered to the Supplier during the period of suspension.

Reasons for suspension specifically include that the NSW Government has reasonable belief regarding any of the following:

- That the supplier has acted in contravention to the NSW Supplier Code of Conduct
- That the Supplier did not submit financial viability information or annual reporting as per section 4.5
- That the Supplier experienced an adverse change in capacity or capability
- Failure to obey an adjudicator's determination under Building and Construction Industry Security of Payment Regulation 2020 (NSW), subject to other legal rights
- That the supplier is bankrupt or insolvent
- That the supplier has made one or more false declarations

- That there has been a significant deficiency or persistent deficiencies in the performance by the supplier of any substantive requirement or obligation under a prior contract
- The Independent Commission Against Corruption (or an equivalent body in a jurisdiction in Australia), within the previous 10 years, has made a finding or has been of the opinion that the supplier has engaged in corrupt conduct.

In the above, a reference to Supplier includes, if the supplier is a body corporate, a director and any other person involved in the management of the affairs of the body corporate.

If the actions required to end the suspension have been implemented the Supplier should provide full details, in writing, to [construction.suppliers@pwa.nsw.gov.au](mailto:construction.suppliers@pwa.nsw.gov.au)

The NSW Government will:

- Reinststate the Supplier's rights and benefits if the issue is resolved, or
- Recommend further action to resolve the issue, or
- Remove the Supplier from the Scheme if the reason for the suspension cannot be resolved to the satisfaction of the NSW Government.

#### 4.6.2 Removal from Scheme

If a Supplier was suspended from the Scheme and the reason for the suspension cannot be resolved to the satisfaction of the NSW Government within 90 days the Supplier will be removed from the Scheme.

If a Supplier is not satisfied with the decision made by the NSW Government regarding the Supplier's suspension or removal from the Scheme, the Supplier may request a formal review or appeal the outcomes of the review.

For further information about review, appeals and complaints refer to section 5.

## 5 Reviews and Appeals

### 5.1 Review

If an Applicant or Supplier is not satisfied with a decision about their Application or a decision about suspension or removal from the Scheme, the Applicant may request a formal review. The request for a formal review must be sought, in writing, within 20 business days of receipt of notification of the decision made by the NSW Government.

The Applicant or Supplier must provide full details of the reasons for the request and, if applicable, include supporting documentation to [construction.suppliers@pwa.nsw.gov.au](mailto:construction.suppliers@pwa.nsw.gov.au)

Any person (or subordinate of that person) cannot participate in the review if they were involved in the making of the original decision.

### 5.2 Appeals

If an Applicant or Supplier is not satisfied with the outcome of the review, the Applicant or Supplier may appeal the review decision by writing to: [nswbuy@treasury.nsw.gov.au](mailto:nswbuy@treasury.nsw.gov.au)

## 6 Other Terms and Conditions

### 6.1 Applicant's acknowledgment

In applying, the Applicant agrees:

- To accept all Scheme conditions listed in this document
- That lodging an Application will evidence the Applicant's agreement to comply with the framework, system, guidelines, licencing requirements and Scheme conditions if included on the Scheme.
- To provide the necessary authority to enable searches and enquiries to be carried out in relation to the Application
- To ensure their subcontractors, consultants and contractors comply with all relevant legal obligations
- That any compliance breach may result in the termination of an engagement and/or suspension or removal from the Scheme.

### 6.2 Confidentiality and Exchange of Information

Information provided in an Application will be retained by the NSW Government, treated as commercial-in-confidence, and not disclosed to any other party unless legally required to do so, or to obtain legal or financial advice or as required for appeal.

Confidential information submitted with an Application may be subject to due diligence, investigation, reference checking, searches, interview, and enquiries. The NSW Government may engage a third party to undertake such actions.

The NSW Government may refer an Applicant's information and documentation to external assessors for assessment. External assessors are required to maintain confidentiality of all information received. However, in lodging an Application, Applicants agree to provide the necessary agency to enable searches and enquiries to be carried out for the assessment.

Contact details and details about the services available from the Supplier will not be publicly available and only shared with NSW Government Agencies, local councils and universities. Details on the Supplier's performance on individual engagements may be shared with other Agencies for the purpose of monitoring performance.

### 6.3 Publicity and use of NSW Government logo by Suppliers

The NSW Waratah logo is a registered trademark and the property of the NSW Government. It cannot be used by suppliers without authorisation.

The terms and conditions of a procurement contract are not sufficient to authorise the use of a trademarked logo.

If you have provided services to the NSW Government, you can reference this as part of your client portfolio with approval from your government agency client.



Suppliers are allowed to use text acknowledging inclusion on the Scheme through statements such as “Prequalified Supplier under NSW Government Scheme SCM1461 Contractor Prequalification and Best Practice Accreditation Scheme”

## 6.4 Disclosure

In applying, the Applicant agrees to permit the NSW Government to:

- Publish information about the Application and the Applicant, including contact information
- Publish information about contracts awarded to the Applicant
- Disclose certain information in accordance with Division 5 of the [Government Information \(Public Access\) Act 2009](#)

## 6.5 Disclaimer

Any matter in relation to or concerning an Application or subsequent inclusion in the Scheme or otherwise, is at the Applicant’s sole risk. All costs, losses and expenses that may be incurred by the Applicant (or its employees, agents, contractors or advisors) in any way associated with an Application or subsequent inclusion on the Scheme or otherwise will be borne entirely by the Applicant.

The NSW Government reserves the right at its absolute discretion to:

- Accept an Application, with or without additional conditions
- Reject an Application
- Suspend or remove a Supplier from the Scheme.

In the exercise of such discretion, the NSW Government will not be liable for any costs or damages incurred by the Applicant or Supplier.

## 6.6 Precedence of documents

When a Supplier is engaged to provide construction services, the agreement comprises the Scheme conditions and the contract (with terms agreed between the Supplier and the Agency).

These conditions do not form part of the contract between the Supplier and the Agency. In the event of any ambiguity or inconsistency between the two documents, the contract between the Supplier and the Agency will override the Scheme conditions.

## 6.7 Expiry of the Scheme

This Scheme will expire on 31 December 2025 but may be extended beyond that time.

## 7 Review and Development of the Scheme

The Scheme will be monitored by the NSW Government to assess whether the objectives and intent of the Scheme are being met. Modifications to the Scheme may be made at the discretion of the NSW Government at any time and may include any aspect of the Scheme based on the requirements of the NSW Government.

Modifications may include a revision of the dollar threshold up to which this Scheme operates (at the moment \$9M ex GST), in line with any changes that may be made to the EPP thresholds for construction services.

Modifications may further be triggered by events such as:

- Changes to government policies and government agency circumstances
- An increase in construction work available beyond that anticipated at the commencement of the Scheme
- Significant vacancies developing in the Scheme
- New requirements which necessitate the creation of sub-categories within Work Categories.

Suppliers accept that modifications may be implemented in the future. Should modifications affect a Supplier's Scheme compliance or ability to make submissions for future work this will be at the sole risk of the Supplier.

When such modifications occur Suppliers will be notified of any changes or transitional arrangements that have been made.

## 8 NSW Procurement Policy Framework

This section provides context about the applicable legislative and policy framework within which the Scheme operates.

Suppliers must at all times comply with all relevant laws and policies, including but not limited to those listed in this section. Breach of any relevant policies and/or laws may result in suspension or removal from the Scheme.

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.

### 8.1 Procurement Board Directions

From time to time the NSW Procurement Board issues Directions under the [Public Works and Procurement Act 1912](#). These Directions determine the rules and guidelines around public sector procurement within the NSW Government. A library of all current Directions in force can be found on [the buy.nsw website](#).

### 8.2 Enforceable Procurement Provisions

The NSW Government issued a Direction in response to its obligations under international procurement agreements. The [Procurement \(Enforceable Procurement Provisions\) Direction 2019](#) under the Public Works and Procurement Act 1912 includes provisions about how Government must engage with its Supplier market in a way that is fair, open and transparent to all Suppliers, including international Suppliers.

### 8.3 NSW Government Action Plan: A ten point commitment to the construction sector

The NSW Government recognises that it can only achieve its infrastructure objectives in partnership with the private sector, and that this depends on healthy ongoing competition between a capable field of construction firms, sub-contractors and the industry supply chain – not just now, but for years to come.

The NSW Government aims to be a “best in class” client for the construction industry and its Suppliers. In return, it expects industry to meet the highest standards of integrity, quality, innovation, diversity and inclusiveness.

In 2018 it issued [A ten point commitment to the construction sector](#) to achieve these goals.

### 8.4 NSW Government Supplier Code of Conduct

The NSW Government strives to conduct sustainable and inclusive government procurement.

Our Suppliers are our partners in delivering the best social and commercial outcomes for the state of NSW and its citizens.

The NSW Government requires all Suppliers to comply with relevant standards of behaviour and must report findings of dishonest, unfair, unconscionable, corrupt or illegal conduct to the NSW Procurement Board. These requirements are essential to business confidence in the NSW

Government's procurement regime as well as public trust more broadly in the Government's decision-making processes.

A minimum set of expectations and behaviours for doing business with NSW Government has been articulated in the [Supplier Code of Conduct](#). All Applicants and Suppliers to this Scheme must comply with it and must have a satisfactory record of compliance with the Code. This also includes ensuring that Suppliers and their subcontractors, consultants, and contractors comply with their legal obligations regarding their employees.

Applicants and Suppliers must further comply with the [NSW Industrial Relations Guidelines: Building and Construction](#).

## 8.5 Financial Assessment

[Financial assessments](#) are part of the due diligence process in awarding NSW Government contracts. They are used to check the financial capacity of the Supplier to complete works or supply goods. Financial assessments are further undertaken during a contract to identify and assess any changes in the financial position and risks associated with the solvency of the contractor.

The Agency responsible for this Scheme uses financial assessments during the Application process and at regular intervals on Suppliers that are included on the Scheme (refer section 4.5.1). The NSW Government may engage a service provider prequalified under the Financial Services Pre-qualification Scheme SCM2491 to undertake such assessments.

## 8.6 Small and Medium Enterprise (SME) and Regional Procurement

The NSW Government is seeking to strengthen its construction supply chain to accommodate its [Small and Medium Enterprise and Regional Procurement Policy](#). This will provide greater opportunities for SMEs and local businesses in regional NSW.

The Scheme Application process will identify small and medium businesses with the appropriate capability and capacity to participate in construction projects. Applicants are expected to select only those regions that their current capacity and capability can support.

For further information refer to [the Procurement Board Direction PBD2019-03](#) on Buy.NSW

## 8.7 Aboriginal Procurement Policy (APP)

This Scheme is aligned to the principles of NSW Government's [Growing NSW's First Economy](#) framework. The framework is a key element of [Opportunity, Choice, Healing, Responsibility and Empowerment \(OCHRE\)](#).

The APP recognises that industry has a key role to play in broadening opportunities for Aboriginal people and that the NSW Government can use its relationship with business to deliver positive social outcomes.

The APP has been developed to create opportunities for Aboriginal owned businesses and encourage Aboriginal employment and training through the supply chain of NSW Government contracts. The Scheme Application process will ask applicants if they are an Aboriginal business, as defined by the [APP](#).

## 8.8 Skills and training in construction

The NSW Government has minimum levels of training for all major Government construction projects consistent with targets in the [Infrastructure Skills Legacy Program \(ISLP\)](#).

The ISLP provides an opportunity to create an on-going legacy for the people of NSW for employment, skills development and diversity in the construction workforce. The ISLP also contributes to improving productivity by building capability and capacity of the construction workforce.

For [further information refer to NSW Procurement Board Direction PBD-2020-03 on buy.nsw](#)

## 8.9 Modern Slavery Legislation

The [Modern Slavery Act 2018 \(NSW\)](#) came into effect on 01 January 2022. The Act recognises that modern slavery is prevalent around the world and in NSW, and sets out steps to ensure NSW is not contributing to these crimes.

Applicants and Suppliers to the PL are expected to comply with the [Commonwealth Modern Slavery Act 2018](#) and the [Modern Slavery Act 2018 \(NSW\)](#). Refer to the following link for more information about Modern Slavery and Procurement:

<https://buy.nsw.gov.au/resources/modern-slavery-and-procurement>

## 8.10 Disability organisations

An Australian Disability Enterprise (ADE) is a not-for-profit organisation that employs people with disabilities. ADEs have the same working conditions as other employers and they empower the disabled to contribute to their communities.

NSW Government agencies [are encouraged to buy from ADE organisations](#) where possible.

## Appendix A - Terms and definitions

Term	Definition
ABN	Australian Business Number (ABN) is a unique number issued by the Australian Business Register (ABR) which is operated by the Australian Taxation Office (ATO) Under the A New Tax System (Australian Business Number) Act 1999. It identifies the business and is used in commercial transactions and dealings with the ATO.
ACN	Australian Company Number (ACN) is a unique number issued by the Australian Securities and Investments Commission (ASIC) to every company registered under the Commonwealth Corporations Act 2001 as an identifier.
Agency	NSW Government agencies, and other clients using the Scheme. This includes State owned corporations, universities, local councils etc. (Agencies)
Applicant	An entity that has applied for inclusion on the prequalification scheme SCM1461
Best Practice Accreditation	The Scheme caters for two levels of Supplier capability: Prequalified Contractors and a higher level of capability of Best Practice Accredited Contractors.  For additional information refer to section 1.4 of the Scheme Conditions
Buy.NSW	The central repository for all NSW Government procurement, <a href="https://buy.nsw.gov.au">https://buy.nsw.gov.au</a>
Construction Services	Services relating to construction of buildings or works, including <ul style="list-style-type: none"> <li>a) pre-erection works</li> <li>b) construction works</li> <li>c) repairs, alterations and restorations.</li> </ul>
Contract system	A system for managing contracts, based on the type of services provided by the Supplier
Contractor performance report (CPR)	A report completed using the NSW Government's CPR template or accepted method
EPP Enforceable Procurement Provisions	The <a href="#">Procurement (Enforceable Procurement Provisions) Direction 2019</a> under the Public Works and Procurement Act 1912
Framework	NSW Procurement Policy Framework - the suite of legislation, policies, Board Directions and other rules that apply to procurement in NSW (including construction procurement)
Government	New South Wales Government

Term	Definition
PL Procurement List	A list established in accordance with Part 6 of the EPP that includes Suppliers who have met the conditions of participation. A PL is intended to be used more than once for procurements by one or more Agency
Regional NSW	includes all areas within NSW outside the Newcastle, Sydney and Wollongong metropolitan areas
SCM1461	Supplier Prequalification Scheme for Construction Works above \$1 million and below \$9 million (ex GST)
Small or Medium Enterprise	An Australian or New Zealand based enterprise with fewer than 200 full time equivalent (FTE) employees
Supplier	An entity that has been included on the Scheme to provide construction works above \$9 million (ex GST)
Supplier Hub (formerly eTendering)	The NSW Government's repository for past, current and future tenders. Suppliers can apply for prequalification schemes, manage their scheme Application and change contact details. Agencies use the site to select prequalified Suppliers for tendering opportunities.
The government Agency responsible for the Scheme	Department of Regional NSW
Upper Contract Value	Represents the potential value of the largest single contract, or the total value of smaller contracts for which the Supplier may be considered for tendering opportunities on an annualised basis.
Work Categories	A system to classify similar types of work, e.g. building works, civil works and fitout
Works	Construction works including building works, fitout and civil works but excluding construction related consultancy services, architectural design and heritage conservation