



SCM100002 PROCUREMENT LIST

SCM100002 Procurement List – Conditions for Participation

For Construction Services Valued Over \$9 million

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More information

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What has Changed?

To facilitate procurements valued over \$9 million excluding GST, a separate Procurement List (PL) has been established.

The PL for construction services was originally established in 2020 as part of Scheme SCM1461 to meet the requirements of NSW Procurement Board Direction PBD 2019-05-Enforceable Procurement Provisions (EPP).

With the IT System changeover to the buy.nsw Supplier Hub System, NSW Public Works, in collaboration with the Department of Customer Service (DCS), has taken this opportunity to streamline the application process and flow of prequalification information to users.

The new online application form for SCM100002 has gone live on the buy.nsw Supplier Hub System and it is available at [SCM100002 Online Application](#).

The existing prequalified suppliers with Individual Financial Thresholds over \$9 million have been transferred to the newly created SCM100002 Procurement List.

Already prequalified suppliers who want to increase their allocated individual financial threshold or to apply for additional work categories/capabilities must apply through the Supplier Hub System and submit the required information for assessment and approval.

Where to Start?

PL Conditions for Participation and associated documents for Applicants and Agencies are available at the [Procurement List for Construction Services Valued over \\$9 million scheme page](#).

Terms and Definitions

Refer to [Error! Reference source not found.](#) used in this document.

Registering and Applying for Prequalification

Applicants must be registered on the Suppliers Hub before commencing the application process using the following link: [Registration on the Suppliers Hub](#).

PL membership/prequalification is only granted once the online application has been lodged and approved. Prequalification does not extend to related or subsidiary companies or entities of a prequalified supplier.

The online application form for this PL is available at [SCM100002 Online Application](#).

Each step of the application process is explained in the Application Lodgement section.

Enquiries

For enquiries please contact: contractorprequal@pwa.nsw.gov.au

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1 Procurement List Overview

1.1 What is a Procurement List?

This PL provides a mechanism for the NSW Government, local councils and universities to procure construction services valued over \$9 million. A PL is a list of suitable suppliers who can be used for more than one procurement by one or more agencies, and it is equivalent to a prequalification scheme.

This PL was established in accordance with Part 6 of the EPP and may be used for a procurement to which the EPP applies. NSW Procurement Policy Framework Section of this document describes the EPP and includes the policy framework and legislation applicable.

The NSW Government invites international and domestic Suppliers to make an Application to be included on this PL. Applications are continuously open and the period of the PL is indefinite, which means it will continue to operate until Suppliers are notified of its termination.

The Application process must be completed via the Supplier Hub website, previously called the eTendering system. If the NSW Government is satisfied that the Applicant meets the Conditions for Participation, the Applicant will be included on the PL as a Supplier.

Only Suppliers, or a limited number of Suppliers, included on the PL may receive invitations from NSW Government agencies to make submissions relating to procurements for which the list was established.

NSW Government agencies may also seek to conduct negotiations relating to any procurements from Suppliers included on the PL. This may include post tender negotiations with the preferred tenderer.

The following table lists the key benefits of the PL:

Benefits to NSW Government	Benefits to Suppliers
Easy identification of Suppliers to be included in submissions for construction services. This reduces the time, cost and risk to agencies who need to comply with the EPP provisions	Ability to be invited by NSW Government to make submissions for construction services
A centralised prequalification assessment based on objective criteria to appoint suitable Suppliers	Continuously open Application process including to increase the maximum value for which the Supplier is prequalified based on financial capacity and previous experience
Sharing of performance related information and volume allocation to construction Suppliers across the NSW Government	A streamlined approach to submit a single Application and prequalify for all agencies

1.2 Construction Services Valued Over \$9 million

This PL may be used to procure the construction services valued over \$9 million for the following work categories:

- **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 treatment plants, reservoirs, dams, pipelines, pumping stations, balance tanks, surge tanks, storage tanks and discharge structures.
- **Wastewater infrastructure:** Include sewage treatment plants, pipelines, and pumping stations.

The above services fall within the definition of Construction Services as defined in the EPP. Further details on the Work Categories are provided in this document.

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 website:

<https://www.infrastructure.nsw.gov.au/industry/construction-industry/pipeline-of-projects/>

1.3 Out of Scope

Construction services not explicitly listed in the Capabilities Section are out of scope for this PL.

Applicants are to note that other mechanisms exist for the NSW Government to procure the services listed at the Capabilities Section in addition to this PL, including:

- Open approach to market (in accordance with Part 4 of the EPP)
- SCM5861 Land and Housing Residential Building Works
- HI19543 Invitation to Submit an Expression of Interest for Health Infrastructure Construction Services Contractor Procurement List
- SCM1461 Scheme for Construction Work between \$1 million and \$9 million
- SCM0256 General Construction Works up to \$1 million.

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

1.4 Application Process

The NSW Government invites international and domestic Suppliers to make an application to be included on the PL.

The Conditions for Participation that applicants must satisfy for inclusion on the PL are described in this document.

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 at [Registration on the Supplier Hub](#).

The online application for the PL membership is available at [SCM100002 Procurement List Application](#).

2 Capabilities

2.1 Work Categories

This PL covers the following work categories related to construction services as defined in the EPP Board Direction:

- **Building Works:** This category is for multi-trade building works for new buildings and additions to existing buildings. It 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.
- **Heritage Building Works:** Heritage specialty including restoration and conservation works and or associated stonemasonry, carving & fixing, roofing, carpentry, plastering and painting.
- **Modular Building Works:** Modular building specialties including portable buildings, prefabricated buildings, modules or sections manufactured off-site and amenable to on-site expedited delivery or modular assembly.
- **Fit out and Refurbishment:** This category is for fit out and refurbishment work. It further includes the final preparation of internal areas for occupation by the client in new and existing buildings.
- **Civil Works:** This category is for civil engineering works including excavation and bulk earth works, minor roads and related works.
- **Water Infrastructure:** Water supply infrastructure specialties including reservoirs, dams and or associated pipelines, pumping stations, balance tanks, surge tanks, storage tanks and discharge structures.
- **Wastewater Infrastructure:** Wastewater infrastructure specialties including sewage treatment plants and or associated pipelines and pumping stations.

2.2 Contract System/Delivery Models

Procuring entities may approach Suppliers for the provision of services under the following Contract System/Delivery Models:

- **Construct Only (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.
- **Design and Construct (D&C):** The Supplier is responsible for a significant part of the design, design development, and documentation and design coordination, as well as construction.
- **Managing Contractor (MC):** The managing Supplier may be engaged on a project brief, to commission, manage and accept responsibility for consultants that design the works and Suppliers that construct the works. The Principal may also engage a Project Manager or Project Director to manage the Managing Supplier Contract and to support and advise the Principal. A Managing Supplier Contract usually involves the payment of actual reasonable costs (up to a Guaranteed Construction Sum(s), where agreed for construction work, or a Guaranteed Price for all the work) plus fees.

3 Conditions for Participation and Assessment

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

3.1 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).
- If applicable, additional evidence of company registration outside of Australia
- Applicants cannot be a Trust or Trustee.
- Applicants are not applying for the same category of work and maximum individual financial threshold 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 maximum individual financial threshold as any of the parties to the joint venture.
- Agreement to the NSW Government Supplier Code of Conduct.
- 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.
- The NSW Government will not include on this PL a Business Name, Trust or other entity that is under any form of external administration.

3.2 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 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.
 - ◆ For Australian companies, the financial statement must represent same ABN as provided for the Applicant. International companies must demonstrate how the entity that has provided the ABN is the same as the entity for which the financial statements have been provided.
 - ◆ Financial statements must be prepared following internationally recognised Accounting Standards, such as IFRS, US-GAAP, or AASB. Financial statements should be

provided in US Dollars, Euro or Australian Dollars. 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 maximum individual financial threshold 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
 - Minimum annual turnover of \$1 million.
- A declaration that the Directors of the Applicant have never been insolvent or bankrupt.
 - The total contract value of a project delivered over the past two years.

Based on its demonstrated financial capability and contract performance capability, the NSW Government will allocate the maximum individual financial threshold to a Supplier to be potentially invited to the NSW Government tender opportunities once included on the PL and if successful in a subsequent submission to an Agency.

The maximum financial threshold will be the lesser of the financial capability (determined by a third part financial assessment) and the highest value of any successfully completed contract over the past three years.

Example 1:

Financial Capacity assessed by the NSW Government through an external assessor = \$100 million

Project 1: contract value at \$80 million

Project 2: contract value at \$60 million

The Applicant will be included on the PL with a maximum financial threshold of \$80 million.

Example 2:

Financial Capacity assessed by the NSW Government through an external assessor = \$50 million

Project 1: contract value at \$70 million

Project 2: contract value at \$100 million

The Applicant will be included on the PL with a maximum financial threshold of \$50 million.

Applicants and Agencies should note that the maximum financial threshold 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 PL.

3.3 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:

Agreement to use GC21 Edition-2 standard form contract

- Agreement that the Applicant is willing to enter into a substantially unamended form of the template contracts that make up the GC21 contracting suite as published at <https://info.buy.nsw.gov.au/resources/gc21> should they be successful in a submission to an Agency after being included on the PL. GC21 is the main contracting suite used by NSW Government Agencies and will underpin most contracts offered following a successful tender submission. Applicants are to note that some Agencies may use slightly amended versions of GC21 when contracting to accommodate the specific needs of the Agency.

Ability to work collaboratively

- At least two of the Key Personnel nominated by the Applicant have completed [GC 21 cooperative based contracting training](#), which is also available online, 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.
- The Applicant can demonstrate its ability to work collaboratively with stakeholders.
- The Applicant can demonstrate its ability to manage industrial relations.

Quality Management System (QMS)

- Demonstrated that adequate QMS systems are in place, including through certification to ISO 9001 through an organization listed by [JAS-ANZ](#).
- Demonstrated that QMS systems are being followed and complied with through the submission of two (2) 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 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 through the submission of one of the following documents for each of two nominated projects:
 - ◆ 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.

Environmental Management System (EMS)

- Demonstrated that adequate EMS systems are in place, including through certification to ISO 14001 through an organization listed by [JAS-ANZ](#).

- Demonstrated that EMS systems are being followed and complied with through the submission of two (2) Environmental Management Plans developed and used by the Applicant on separate projects. These plans must comply with the Applicants EMS certification/accreditation.

Project Management Systems

- Demonstrated that personnel have qualifications relating to project management including:
 - A university degree in project management
 - A higher education qualification with a substantial project management component
 - BSB51407 Diploma of Project Management or equivalent qualification
 - Certified Practicing Project Practitioner (CPPP) by Australian Institute of Project Management (AIPM)
 - PRINCE2 practitioner
 - PMP (certified project management professional) by Project Management Institute, Inc. USA

Demonstrated that project management systems are being followed and complied with through the submission of two (2) Project Management Plans developed and used by the Applicant on separate projects. These plans must address the typical elements of a project management plan as per the above personnel qualifications.

3.4 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 experience of key personnel in categories nominated, wherever it has occurred.
- Demonstrated relevant organisational experience delivering contracts within the categories nominated, wherever they have occurred.
- Provided two client referees or performance reports for fully completed contracts delivered during the last three years for each nominated work category.

3.5 Application Assessment

Applications are assessed based on four main criteria are used (but not limited to) to verify that the Applicant satisfies the conditions of participation.

Examples (but not limited to) are listed below:

- Legal Capacity – e.g., a current Australian Business Number (ABN) listed on the ABN Lookup/ASIC Register for the Entity name (not the business name) lodging the Application.
- Financial Capacity – e.g., the Applicant is financially solvent and not under external administration.
- Commercial Ability – e.g., certificates provided (qualifications, licenses, certifications, and accreditations).

- Technical Ability – e.g., two separate Client/Referee Reports/CPRs for fully completed contracted engagements for each Work Category and Financial threshold applied.

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, Entity Name, Business Address provided by the Applicant.
- For international entities, a lookup on websites similar to the ABR that allow validation of the Applicant's company registration and information.
- 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 independent of where the business activity occurred.
- Evaluation of the Applicant's commercial and technical abilities on the basis of the information provided by the Applicant about its business activities, wherever they have occurred.
- Referee checks to validate the nominated project experience and the experience of key personnel.
- Checks to validate the accuracy of any certificates provided, such as for qualifications, licenses, certifications, and accreditations.

3.6 Application Outcome

On completion of application assessment, the Supplier Hub System will send an automated email to the nominated Supplier Hub account's contact person. Details about the assessment outcome will be available in details under the "My Applications" Tab in your Supplier Hub account.

It is highly recommended to review any comment listed under the "Notes to Supplier" sections before contacting the Scheme Owner for clarifications. The Applicant will also be able to review the rejected application, amend it and re-submit it with additional information as required.

For more information and to review details of the assessment outcome notes, refer to [Schemes User Guide – Suppliers and Scheme Members](#). If you couldn't find what you were looking for, please email buy.nsw@customerservice.nsw.gov.au or call 1800 679 289.

4 Suppliers included on the Procurement List

4.2 Bidding for Work

Only Suppliers, or a limited number of Suppliers, included on the PL may receive invitations from a NSW Government Agency for procurement of construction services related to the work categories approved under this PL.

Agencies inviting submissions may only approach a limited number of Suppliers on the PL 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 based on those Suppliers’:

- Nominated Work Category.
- Relevant experience, wherever it has occurred.
- Financial capacity to undertake the proposed work.
- Availability and capacity for undertaking the proposed work.

Government agencies may seek to conduct negotiations relating to any procurements from Suppliers on the PL. This may include post tender negotiations with the preferred supplier.

4.2 No Guarantee of Work

A Supplier’s inclusion on the PL does not guarantee:

- Continuity of the inclusion on the PL.
- Receipt of opportunities to make submissions.
- 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 PL.

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 PL may be subject to a process of continuous monitoring and review in all matters related to the PL 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.
- If the Supplier has failed to pay taxes.
- If the Supplier has been convicted of an offence punishable by imprisonment for a term of 2 years or more, or by a fine of \$200,000 or more.
- If the Supplier exhibited unprofessional conduct in a jurisdiction in Australia.

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 Environmental Management System 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.
- The Supplier's compliance with its own Project Management systems.
- Industrial relations issues that have resulted in a significant disruption to the works progress on the Supplier's NSW Government contracts.
- 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 Skills and training in construction section.

Technical Ability

- Project outcomes of projects delivered by the Supplier.
- Client satisfaction on projects delivered by the Supplier.
- Contractor Performance Reports (CPR).
- Deficiency or persistent deficiencies in the performance by the supplier of any substantive requirement or obligation under a contract.

4.4 Changes to Supplier's status

4.4.1 Changes to Supplier's Circumstances

Suppliers must send an email to the PL Owner of any substantial change in their financial capacity, technical capacity, capability, ownership status, contact details or address.

4.4.2 Changes to ABN

In case the approved supplier/entity changes its ABN, it is deemed to be a new entity and must re-apply as a new entity for inclusion in the PL. As such, the previously approved Supplier will be excluded from the PL as it is no longer eligible to contract with government using the previously registered ABN.

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 PL.
- Number of submissions/bids made by the Supplier.
- Number of contracts awarded to Supplier.
- Value of contracts awarded to Supplier.

4.6 Exclusion from Procurement List

4.6.1 Exclusion from Procurement List

The NSW Government may exclude a Supplier from the PL. Reasons for exclusion 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.
- 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.
- That the supplier has failed to pay taxes.
- That the supplier has been convicted of an offence punishable by imprisonment for a term of 2 years or more, or by a fine of \$200,000 or more.
- That the supplier has been found guilty of professional misconduct or unprofessional conduct in a jurisdiction in Australia.

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.

5 Reviews, Appeals and Complaints

5.1 Review

If an Applicant or Supplier is not satisfied with a decision about their Application or a decision about their exclusion from the PL, 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 contractorprequal@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: contractorprequal@pwa.nsw.gov.au

5.3 Complaints

Complaints refer to complaints relating to alleged breach(es) of the enforceable procurement provisions in the EPP which must be managed in accordance with Part 11- Divisions 5 to 7 of the PWP Act, as amended by the PWP Amendment Act.

- Affected Applicants and Suppliers may complain to the government Agency responsible for this PL, if they believe the government Agency responsible for this PL plans to breach, is breaching or has breached, an enforceable procurement provision in the EPP.
- Affected Applicants and Suppliers may complain to an Agency using this PL, if they believe that Agency has plans to breach, is breaching or has breached, an enforceable procurement provision in the EPP.
- Applicants and Suppliers may, in relation to complaints about covered procurements, apply to the Supreme Court to:
 - ◆ Grant an injunction to stop the Agency from breaching or proposing to breach an enforceable procurement provision,
 - ◆ Grant an injunction requiring the Agency to do any act or thing necessary to avoid or remedy a breach or proposed breach of an enforceable procurement provision,
 - ◆ Make an order for the Agency to pay compensation (limited to certain matters) to the supplier in respect of the breach or proposed breach of an enforceable procurement provision.
- Applicants and Suppliers that wish to seek an injunction from the Supreme Court must apply within 10 days (or any other period prescribed by the regulations) after the later of:
 - ◆ The day on which the alleged breach occurred.

- ◆ The day on which the Applicant or Supplier became aware, or ought reasonably to have become aware, of the alleged breach or the alleged proposed breach of an enforceable procurement provision in the EPP.
- Agencies must act in a timely manner to consider and resolve complaints, if agencies wish to minimise the likelihood of the Applicants or Supplier taking the matter to the Supreme Court.
- The Supreme Court may allow an Applicants or Supplier to apply for an injunction after the 10 day time limit has passed if the Court is satisfied that the delay is due to the Applicant's or Supplier's reasonable attempt to resolve the complaint before applying for the injunction, or there are special circumstances that warrant a longer period.
- While the Supreme Court may potentially hear a complaint after the 10 day time limit, the obligation remains on Agencies to respond to complaints in a timely and responsive manner.

Applicants and Suppliers wishing to lodge a complaint in relation to an alleged breach of an enforceable procurement provision within the EPP must:

- Make the complaint in writing.
- If the complaint relates directly to how this PL is established or administered or if the complaint is in relation to an Application to be included on the PL, submit the complaint to the Secretary of the Department of Regional NSW.
- If the complaint relates to an invitation to a submission or the award of a specific tender, quote, procurement or contract, submit the complaint to the agency head of the Agency that is responsible for that specific tender, quote, procurement or contract.

A complaint should, at a minimum, specify the facts which give rise to the complaint and the date the Applicant or Supplier became aware of those matters. If the agency has also specified the type of information that should be included in any complaint to it, Applicants and Suppliers are encouraged to provide that information so the complaint can be addressed promptly.

The government Agency responsible for this PL will manage the complaint in accordance with the [NSW Procurement Board Complaint Management Guidelines](#).

Applicants and Suppliers may withdraw the complaint by sending a written notice to the agency head.

6 Other Conditions

6.1 Applicant's Acknowledgment

In applying, the Applicant agrees:

- To accept all PL 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 PL conditions if included on the PL.
- 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 exclusion from the PL.

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 Use of NSW Government Logo

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 PL through statements such as "Supplier under NSW Government Procurement List".

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 PL 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 PL 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
- Exclude a Supplier from the PL.

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 PL 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 PL conditions.

6.7 Termination of Use of the Procurement List

The NSW Government will notify Suppliers included on the PL at least six months prior to terminating the PL.

This notification will be via:

- An email notification generated through the Supplier Hub system to the contact details provided by the Supplier
- A public notice on the Supplier Hub website stating that the PL will be terminated and the date of termination
- A public notice on the buy.nsw website stating that the PL will be terminated and the date of termination.

7 Review and Development of the Procurement List

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

Modifications may include a revision of the dollar threshold above which this PL operates (at the moment \$9 million), 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 services available beyond that anticipated at the commencement of the PL.
- Significant vacancies developing in the PL.
- 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 PL 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 PL 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 exclusion from the PL.

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. This PL has been established following the requirements of part 6 of the EPP.

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 PL 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 PL uses financial assessments during the Application process and at regular intervals on Suppliers that are included on the PL (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 PL 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 PL 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 policy 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.

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 [Aboriginal Procurement Policy](#) framework.

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 more information, refer to [PBD-2023-01 Skills, training and diversity in construction](#)

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 PL. This includes State owned corporations, universities, local councils etc. (Agencies).
Applicant	An entity that has applied for inclusion on the PL.
Application	Refers to the online application form and responses within it to produce a formal request to be considered for inclusion on the PL.
buy.nsw	The central repository for all NSW Government procurement, https://buy.nsw.gov.au
Construction Services	Services relating to construction of buildings or works, including <ul style="list-style-type: none"> a) pre-erection works b) construction work c) repairs, alterations and restorations.
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.
Enforceable Procurement Provisions (EPP)	The Procurement (Enforceable Procurement Provisions) Direction 2019 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.
Procurement List (PL)	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.

Term	Definition
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 Procurement List to provide construction services valued over \$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 PL	Department of Regional NSW.
Work Categories	A system to classify similar types of work, e.g. building works, civil works and fitout.
Works	Construction work including building works, fitout and civil works but excluding construction related consultancy services, architectural design and heritage conservation.