Local market testing

# Guidance on increasing opportunities for local suppliers to supply to government

30 September 2024

Learn about the guidelines for NSW Government agencies on engaging local suppliers in procurement processes and the requirements for local market testing

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## What you need to know

* Local NSW-based suppliers must have full and fair opportunity to participate in procurement processes
* Agencies must take steps to identify capable NSW-based suppliers during the planning stage for all procurements valued $7.5 million or more (excluding GST)
* If a NSW-based supplier is not awarded the contract, agencies must document the reasons why
* Starting 1 January 2025, agencies must collect and report quarterly data about the use of NSW-based suppliers in procurements valued $7.5 million or more (excluding GST)
* Agencies must update their procurement frameworks to implement the PBD 2024-02 by 15 December 2024
* All NSW Government agencies must implement the board direction promptly, but no later than 1 January 2025.

## Procurement Board Direction 2024-02

PBD 2024-02 Increasing opportunities for local suppliers to supply to government was released by the Procurement Board on 9 September 2024.

The direction requires agencies, for projects and contracts valued $7.5 million or more, to:

* conduct market testing during procurement planning to identify NSW-based (local) suppliers
* ensure NSW-based suppliers have full and fair opportunity to participate in procurement processes
* state, on an ‘if not, why not’ basis, why a contract has not been awarded to a NSW-based supplier if one is available
* report on the implementation of the direction.

## Understanding applicable procurements

The direction applies to:

* NSW Government procurement for a project or contract with a budget of $7.5 million or more
* all categories of procurement for goods and services, including construction and ICT
* all procurement arrangements, from standalone contracts to whole-of-government contracts. This includes procurements using existing prequalification schemes, and the renewal or establishment of procurement panels
* all procurement processes, including procurements using schemes or panels, and direct negotiations.

The direction was issued on 9 September 2024.

In acknowledgement that agency policies, templates and systems may need to be updated before the direction can be implemented for all procurements valued $7.5 million or more, the Minister has set a cut-off date of 1 January 2025 for agencies to ensure the direction is implemented.

However, agencies must implement the direction promptly, but no later than 1 January 2025.

The direction does not apply to procurements that commenced prior to 9 September 2024.

Agencies are to take reasonable steps to apply the direction to any procurements that had commenced before 9 September 2024, where feasible.

## Updating procurement frameworks.

By 15 December 2024, agencies must update their procurement frameworks, including relevant policies, procedures, standards and guidance material, to implement the board direction.

## Engaging NSW-based suppliers and recording ‘if not, why not’ reasoning

Promptly, but no later than 1 January 2025, agencies must:

* adjust procurement processes to require that agency buyers identify capable NSW-based suppliers during the planning stage of all procurements valued $7.5 million or more
* ensure any NSW-based suppliers identified during the planning stage are given full and fair opportunity to participate in the procurement, and
* state, on an ‘if-not, why not’ basis, why a NSW-based supplier was not awarded the contract, if one is available.

Agencies should consider their level of confidence in contract value estimates, and apply the Direction if there is a moderate or higher risk that the actual value of a procurement may exceed $7.5 million (excluding GST).

## Embedding local market testing in procurement plans

### Starting local market testing

Local market testing involves taking reasonable steps to identify if any NSW-based supplier or suppliers with the required capacity and capability can supply the goods or provide the services required by your agency.

The local market testing process should be proportionate to the scope and value of the procurement. Compliance with the local market testing component of the Direction is focused on the actions taken to identify NSW-based suppliers.

Reasonable steps could mean conducting desktop research, undertaking further market research, engaging with industry bodies or other activities up to issuing a request for information or seeking expressions of interest from the market.

1. Search for NSW-based suppliers. This can be done through several sources, including:

* [Supplier hub](https://buy.nsw.gov.au/suppliers), which can be used to achieve multiple policy priorities as suppliers such as NSW-based suppliers, small and medium enterprises, Aboriginal businesses, social enterprises, and verified gender-equitable suppliers are tagged in the system.[[1]](#footnote-2) Supplier hub now provides a tag for ‘NSW-based’.
* Identifying NSW-based suppliers on whole-of-government arrangements, such as panels and prequalification schemes.

NOTE: where a whole-of-government arrangement is mandatory, it is sufficient to review suppliers on the scheme or panel to identify NSW-based suppliers. If the scheme or panel is not mandated, agencies should use multiple sources to identify NSW-based suppliers if there are no NSW-based suppliers on the scheme or panel.

* Desktop research, such as an online search and referring to industry-based registers or representative organisations
* Professional and industry networks, e.g. suppliers used by other agencies for similar projects
* Engaging with business support and industry bodies, e.g. the [Industry Capability Network](https://www.icn.org.au/icn_nsw/) or [Yarpa Hub](https://yarpa.com.au/)
* Arranging supplier demonstrations or briefings for agency buyers
* Issuing a request for information (RFI) to the market.
* Issuing an expression of interest (EOI) as part of a multi-stage procurement process.
* Issuing an open tender that is advertised publicly via the eTendering website and is open to any interested supplier. Agencies should ensure there that NSW-based suppliers are not disadvantaged by the procurement specifications or conditions for participation.

Agencies are encouraged to use multiple methods if no NSW-based suppliers are found when using a particular approach.

1. Verify supplier details and confirm the supplier(s) is ‘NSW-based’ on the [Australian Business Register](https://abr.business.gov.au/) and confirm:

* the supplier’s ABN is active
* the supplier’s registered ‘main business location’ is identified as NSW and has a NSW postcode.

Agencies must complete this step to ensure suppliers meet the definition of a NSW-based supplier under the direction.

(NB the Australian Business Registrar requires the main business location to be a physical address. Suppliers provide separate details, such as an accountant’s address, to receive notices or correspondence from the Registrar. There are penalties for entering misleading or inaccurate data on the Register.)

NOTE: Local market testing is an initial step to prepare agencies to support more targeted upcoming local content reforms. The definition of ‘local’ under this Direction is a NSW-based supplier, whereas the definition of ‘local’ under the upcoming local content policy will be an Australian and New Zealand-based supplier.

### Determining if a NSW-based supplier has the required capability and capacity

The objective of the direction is to ensure NSW-based suppliers that can fulfil the needs of the procurement are provided full and fair opportunity to participate in government procurement processes.

Although local market testing is not an evaluation process, it may be helpful to consider possible tender evaluation criteria as they apply to the specific procurement, such as any licensing or qualification requirements, compliance with relevant standards, or work, health and safety requirements. Some of this information may be available from public sources such as through licensing bodies or the supplier’s website.

Agencies should use their judgement and determine the appropriate approach to determining capability and capacity, and the level of detail required, depending on the scope and value of the procurement.

Where feasible, agencies can invite NSW-based suppliers to participate during the approach to market (e.g. Request for Quotation (RFQ) or Request for Tender (RFT)) and establish capability and capacity via the formal evaluation. Procurement officers should invite suppliers to tender that they have determined are likely to have the capability and capacity to fulfil the needs of the procurement.

### Examples of reasonable efforts

1. Where an agency is conducting a procurement for professional services (excluding consultancies) with an estimated budget of $8 million, reasonable and proportionate actions might include desktop research and consulting with networks and industry.
2. Where an agency is procuring for construction services with an estimated value of $55 million, it may be reasonable to issue a request for information (RFI) or an expression of interest (EOI). In this instance, such action may be in accordance with the agency’s procurement rules, as the procurement is greater than $50 million, but also, the complex and bespoke nature of the requirements necessitate understanding market interest in tendering.

## Agency recordkeeping requirements

### Planning: Recording steps taken to identify NSW-based suppliers

Agency buyers must record in procurement plans the steps that have been, or are intended to be, taken to identify NSW-based suppliers.

This information should include a summary of steps taken to identify NSW-based suppliers, how capability and capacity were determined and whether or not NSW-based suppliers were found.

Where local market testing will be undertaken through an Rfx or EOI, agencies should record their intention to conduct local market testing in the sourcing stage and identify the proposed process in the procurement plan (such as the strategy, business case or other planning document).

### Contract award: Recording reasons for not selecting a NSW-based supplier during the decision-making process

If one or more NSW-based suppliers is identified through Local Market Testing, and the tender has been awarded to a non-local supplier, you must record the reasons why a NSW-based supplier has not been selected. This is the ‘if not, why not’ part of the direction.

#### Decision making documents

You must record the reasons why a NSW-based supplier has not been selected, if there was one available, in decision-making documents. These are government records used at every stage of the procurement to document your decisions and the reasons behind them.

Agencies will need to determine the specific form of document used and can be informed by existing procurement processes and governance. For example, agencies may use the Evaluation Report or a contract award brief. Good records are part of meeting the policy and legal obligations of every procurement.

#### Referencing value for money criteria

The reason(s) provided for not awarding a contract to a NSW-based supplier should be aligned to the value for money criteria used to evaluate the tender proposals. Value for money remains the overarching consideration in NSW Government procurement activities.

The Direction requires agencies to report to the Procurement Board on the reason why a supplier was not awarded a contract. While this reporting is fulfilled through a separate process, it may assist with the Board reporting if you consider and record the primary reason why the contract was not awarded to NSW-based suppliers in agency decision making documents. The Procurement Reform Advisory Group has agreed the following standard ‘reason codes’ for the purposes of the Board reporting:

* + Mandatory minimum requirements or other specific requirements
  + Capability, experience or qualifications
  + Capacity
  + Quality of submission or tender
  + Financial risks
  + Pricing
  + Suitable but not selected
  + Local benefits test score (made available once Local Content Policy is alive)

See section 10 for a description of each reason.

## Collecting and reporting data on procurement from NSW-based suppliers to the Procurement Board

The Direction includes obligations for agencies to provide data to the Procurement Board on the procurement outcomes from the local market testing requirements.

From 1 January 2025, agencies are to collect the following information on procurements that are published on or after 1 January 2025 on the buy NSW Tenders module and are valued $7.5 million or more

* procurement category
* whether a capable NSW-based supplier or suppliers was identified during the planning stage
* whether the procurement was awarded to a NSW-based (local) supplier, other Australian or New Zealand based supplier, or other international supplier
* the key reasons that each supplier type was not awarded the contract, aligned to value for money criteria.

Government agencies must provide quarterly reports to the Procurement Board, commencing from quarter one in 2025. The first quarterly report will cover the period 1 January – 31 March 2025. Treasury will coordinate whole-of-government reporting at the end of each quarter, and report on implementation to the Procurement Board.

Online reporting process

Agencies can fulfil their reporting requirements using the NSW Opportunities Hub on buy.nsw.

NSW Government supply opportunities valued more than $150,000 (inc. GST) must be published on the buy NSW Opportunities Hub, with agencies required to transition during 2025 (noting an application programming interface (API) will allow agencies to automate publication of opportunities from existing agency systems).

For the online reporting process, the reporting fields will be populated from the publication notice on the Opportunities Hub for any contract to which the Direction applies (based on actual contract value).

As reporting will be triggered by actual contract value, Agencies should consider their level of confidence in contract value estimates, and apply the Direction if there is a moderate or higher risk that the actual value of a procurement may exceed $7.5 million as there may be a chance they will need to report on the contract .

Agency buyers will need to ensure they **complete opportunities** via the Opportunities Hub, and enter the reason codes for each unsuccessful supplier, to use the online reporting features.

Agencies will have 2 weeks following the close of each reporting period (the last day of the March, June, September and December quarter) to update and finalise their opportunities and so activate the reporting.

NSW Procurement will then download and distribute a report to agencies for verification, prior to submitting the whole-of-government quarterly local market testing report to the Procurement Board.

The report to the Board will contain aggregated agency group data across the 4 reporting requirements in the Direction. The reports will not include individual supplier data or specific tender outcomes.

**Reasons why a supplier was unsuccessful**

The Direction requires agencies to report to the Board on the reasons why a supplier was not awarded a contract. This fulfils the Direction’s reporting requirement d).

The Procurement Reform Advisory Group has agreed the following standard ‘reason codes’. Agency buyers should select **one reason code per unsuccessful supplier** when closing the opportunity on the Opportunities Hub:

* + Mandatory minimum requirements or other specific requirements
  + Capability, experience or qualifications
  + Capacity
  + Quality of submission or tender
  + Financial risks
  + Pricing
  + Suitable but not selected
  + Local benefits test score (made available once Local Content Policy is released)

While there may be many reasons why a supplier might be unsuccessful, **the most dominant reason should be selected.**

See section 10 for a description of each reason.

## Interactions with PBD 2019-05 Procurement (Enforceable Procurement Provisions) Direction

The purpose of the direction is to:

* ensure NSW-based suppliers are provided a full and fair opportunity to compete for government contracts
* better inform the State about the NSW procurement landscape.

The direction does not require a particular outcome when agencies are selecting suppliers.

Agencies can apply the direction to applicable procurements while continuing to comply with requirements for approaching the market in PBD 2019-05 and ensuring that NSW-based suppliers are not disadvantaged by the procurement specifications or conditions for participation.

## Definitions

### Local supplier

A NSW-based supplier is defined as having:

* an active ABN
* a main business location as displayed on the ABN lookup with a NSW postcode on the Australian Business Register.

These conditions can be confirmed using the Australian Business Register’s [ABN Lookup website](https://abr.business.gov.au/).

NSW-based suppliers are identified in the Supplier Hub.

### Determining the commencement date of procurement

The direction provides information on how to determine whether a procurement has commenced in the ‘Transitional Arrangements’ section. A procurement has commenced if and when:

1. the business case which contains a strategy for approaching the market for the procurement is:

* submitted for review by another government entity as part of a mandatory process (e.g. an investor assurance (Gateway) process or to Treasury as part of a funding proposal
* if the above is not applicable, approved by the government agency

1. if 1. is not applicable, the strategy for approaching the market for the procurement is approved by the government agency
2. if neither 1. or 2. is applicable, a request for submissions (Rfx) is released by the government agency.

NOTE: The reporting provisions apply to procurements that are published on or after 1 January 2025

### Calculating procurement value

The value of a procurement is its estimated budget.

For procurement panels including standing offers (i.e. a procurement panel with one supplier), the value of the procurement is the estimated value of all contracts that may be entered into over the life of the panel, including extension options.

Past agency or whole-of-government spend on the goods or services covered by the panel, sourced from supplier reports (if you are renewing the panel) or spend cube, is often used to estimate the value of a new or renewed panel or standing offer.

The estimated budget includes all costs over the duration of the project or contract consistent with clause 7 of [Procurement Board Direction PBD 2019-05](https://www.info.buy.nsw.gov.au/policy-library/procurement-board-directions/pbd-2019-05-enforceable-procurement-provisions#:~:text=This%20Direction%20sets%20out%20requirements%20relating%20to%20international%20procurement%20agreements) which provides:

1. The estimated value of a procurement is an estimate of the maximum value (excluding GST) of the proposed procurement contract made by the government agency concerned, and is to include the value of the following:

* the goods or services to be procured
* all forms of remuneration payable by the government agency, including any premiums, fees, commissions, interest and other revenue streams that may be provided for in the proposed contract
* any options, extensions, renewals or other mechanisms that may be executed over the life of the contract.

1. If a procurement is to be conducted in multiple parts with a number of proposed procurement contracts awarded either at the same time or over a period of time, with one or more suppliers, the estimated value of the procurement must include the estimated value of all of the proposed procurement contracts.
2. A procurement must not be divided into separate parts if a purpose of the division is to avoid a relevant procurement threshold.
3. If the maximum value of a proposed procurement cannot be estimated, the procurement is taken to have an estimated value that exceeds the relevant procurement threshold for the procurement.

Agencies should consider their level of confidence in contract value estimates, and apply the Direction if there is a moderate or higher risk that the actual value of a procurement may exceed $7.5 million.

### Definitions for value-for-money criteria to reference for reasons why a supplier was unsuccessful and ‘if not, why not’ reasoning (see section 7 and section 8).

|  |  |
| --- | --- |
| **Criteria to reference** | **Definition** |
| Mandatory minimum requirements or other specific requirements | Did not meet mandatory, legal, contractual, regulatory or policy requirements in their proposal, e.g. does not have required licenses and/or qualifications; does not meet environmental, social or ethical requirements; contract departures excessive |
| Capability, experience or qualifications | Did not demonstrate to a competitive level:   * relevant organisational work experience * staff experience and qualifications * performance history including appropriate referee reports.   History of contractual commitments not being met. |
| Capacity | Did not demonstrate to a competitive level, sufficient resourcing to deliver the contract successfully, such as personnel, plant or equipment.  Risks identified in contingency planning to meet contract delivery in the proposal |
| Quality of submission or tender | Insufficient information provided or did not demonstrate an understanding of requirements to a competitive level. Errors could not be clarified with the tenderer. |
| Financial risks | Financial risks identified in the proposal including financial viability and/or can’t confirm insurances |
| Pricing | Price tendered is beyond market expectation or otherwise uncompetitive. |
| Suitable but not selected | Supplier satisfies tender evaluation criteria **to a high level** but value for money scores were lower compared to the preferred supplier. For example, the supplier scored second and scored closely to the winning supplier.  This must not be selected if any of the other factors in this list were the primary reason the supplier did not win the contract. |
| Local benefits test score (made available once LCP alive) | To be defined |

## Implementation timing

NSW Government agencies must implement the direction to applicable procurements promptly, but no later than 1 January 2025.

For more information, contact the NSW Procurement Service Centre on 1800 679 289 or nsw.buy@treasury.nsw.gov.au.

1. Verification bodies include Supply Nation, NSW Indigenous Chamber of Commerce, Office of the Registrar of Indigenous Corporations, Social Traders and the Workplace Gender Equality Agency Australia (WGEA). [↑](#footnote-ref-2)