

Supplier Procurement List

Consultants in Construction Procurement List - Conditions

Construction related consulting services valued above $9M

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More information

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# What’s changed?

**From 1 August 2023 a new standard form IA contract framework is recommended for use by Agencies when procuring infrastructure advisory services including in this Scheme.**

The IA contract framework includes contract templates and tools for a standardised approach to risk allocation when buying infrastructure advisory services.

Please refer to the [infrastructure advisory services category page](https://buy.nsw.gov.au/resources/infrastructure-advisory-services) on [buy.nsw](https://buy.nsw.gov.au/) for more details and copies of the contract templates and tools.

**From 29 November 2020 NSW Government Agencies can no longer use Scheme SCM1191 for procurements above $9M ex GST as a result of the introduction of the Enforceable Procurement provisions by the NSW Procurement Board.**

This Procurement List has been established to replace SCM1191 for procurements above $9M ex GST. Agencies are encouraged to use this Procurement List for procuring construction related consulting services above $9M.

**From 1 November 2022 the newly established Infrastructure Advisory Standard Commercial Framework is recommended for use by Agencies as guidance for all** engagement types in this Scheme

The Infrastructure Advisory Standard Commercial Framework (IA SCF) includes the following recommended commercial elements:

* Standardised resource and service types
* Capped daily resource rates
* Discount structure
* Expenses policy.

Please refer to the [Infrastructure Advisory Services category page](https://buy.nsw.gov.au/resources/infrastructure-advisory-services)on [buy.nsw](https://buy.nsw.gov.au) for more details.

# Transition Process

**If your organisation wants to   
be eligible to bid for construction related consulting services above $9M**

**Your organisation will need to submit a new Application to be included on the Procurement List for Consultants in Construction.** If you have a current prequalification under SCM1191 for work below $9M that prequalification will remain in place.

**If your organisation is prequalified under SCM1191 and wants to only bid for construction related consulting services below $9M**

**No action is required, and you do not need to submit a new Application.** Your organisation will continue to be prequalified under SCM1191 and Agencies can continue to include your organisation in procurements below $9M (if you are a Certified Consultant) and $250K (if you are a Registered Consultant).

Where to start

## Buy.NSW

All relevant documents related to this Procurement List can be found on Buy.NSW https://buy.nsw.gov.au/schemes, including:

* Procurement List 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 Procurement List

The NSW Government invites Suppliers to make an Application to be included on this Procurement List.

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.Schemes.list>

## Agencies seeking tenders from Suppliers

Agencies seeking tender submissions for a specific project should commence their search in [eTendering Admin Domain](https://www.tenders.nsw.gov.au/?event=admin.login). Guidelines for Agencies have been published with additional information.

## Enquiries

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

Category Manager Construction  
Public Works (PW), Department of Regional NSW  
email: [consultant.prequal@pwa.nsw.gov.au](mailto:consultantprequal@finance.nsw.gov.au)

4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150

Locked Bag 5022, Parramatta NSW 2124

For enquiries specifically about the Infrastructure Advisory Standard Commercial Framework (IA SCF) please contact the Infrastructure Advisory category management team: [infra-advisory@treasury.nsw.gov.au](mailto:infra-advisory@treasury.nsw.gov.au).

Contents

[What’s changed? 1](#_Toc117597405)

[Transition Process 1](#_Toc117597406)

[Buy.NSW 2](#_Toc117597407)

[Terms and definitions 2](#_Toc117597408)

[Application to be included on the Procurement List 2](#_Toc117597409)

[Agencies seeking tenders from Suppliers 2](#_Toc117597410)

[Enquiries 2](#_Toc117597411)

[1 Procurement List Overview 6](#_Toc117597412)

[1.1 What is a Procurement List? 6](#_Toc117597413)

[1.2 Construction related consulting services above $9M 7](#_Toc117597414)

[1.3 NSW Government Construction Pipeline of Work 7](#_Toc117597415)

[1.4 Out of scope 7](#_Toc117597416)

[1.5 Application Process 7](#_Toc117597417)

[2 Work Categories 9](#_Toc117597418)

[2.1 Construction related Project Management services 9](#_Toc117597419)

[2.1.1 Project Manager 9](#_Toc117597420)

[2.1.2 Project Manager Planning and Delivery – Health Infrastructure 9](#_Toc117597421)

[2.2 Architectural Services 9](#_Toc117597422)

[2.2.1 Architectural – General 9](#_Toc117597423)

[2.2.2 Architecture Planning and Delivery– Health Infrastructure 9](#_Toc117597424)

[3. Application to be included on the PL 10](#_Toc117597425)

[3.1 Conditions for participation 10](#_Toc117597426)

[3.1.1 Legal capacity 10](#_Toc117597427)

[3.1.2 Financial capacity 10](#_Toc117597428)

[3.1.3 Commercial ability and technical ability for Construction Related Project Management services 11](#_Toc117597429)

[3.1.4 Commercial ability and technical ability for Architectural Services 13](#_Toc117597430)

[3.1.5 Additional information 14](#_Toc117597431)

[3.2 Assessment of Applications 14](#_Toc117597432)

[3.3 Outcome of the Application 15](#_Toc117597433)

[3.3.1 Notification of the outcome 15](#_Toc117597434)

[3.3.2 Review, Appeals and Complaints 15](#_Toc117597435)

[4 Suppliers included on the Procurement List 15](#_Toc117597436)

[4.1 Bidding for Work 15](#_Toc117597437)

[4.2 No Guarantee of Work 16](#_Toc117597438)

[4.3 Performance management 16](#_Toc117597439)

[4.3.1 Supplier’s responsibilities in performance management 16](#_Toc117597440)

[4.3.2 Government’s responsibilities in performance management 16](#_Toc117597441)

[4.4 Changes to Supplier’s status 18](#_Toc117597442)

[4.4.1 Changes to Supplier’s circumstances 18](#_Toc117597443)

[4.4.2 Changes to ABN 18](#_Toc117597444)

[4.5 Reporting 19](#_Toc117597445)

[4.5.1 Annual check of financial viability 19](#_Toc117597446)

[4.5.2 Annual reporting 19](#_Toc117597447)

[4.5.3 Quarterly reporting 19](#_Toc117597448)

[4.6 Exclusion from Procurement List 19](#_Toc117597449)

[4.6.1 Exclusion from Procurement List 19](#_Toc117597450)

[4.6.3 Review, Appeals and Complaints 20](#_Toc117597451)

[5 Reviews, Appeals and Complaints 20](#_Toc117597452)

[5.1 Review 20](#_Toc117597453)

[5.2 Appeals 20](#_Toc117597454)

[5.3 Complaints 21](#_Toc117597455)

[6 Other Terms and Conditions 22](#_Toc117597456)

[6.1 Applicant's acknowledgment 22](#_Toc117597457)

[6.2 Confidentiality and Exchange of Information 22](#_Toc117597458)

[6.3 Publicity and use of NSW Government logo by Suppliers 23](#_Toc117597459)

[6.4 Disclosure 23](#_Toc117597460)

[6.5 Disclaimer 23](#_Toc117597461)

[6.6 Precedence of documents 23](#_Toc117597462)

[6.7 Termination of use of the Procurement List 24](#_Toc117597463)

[7 Review and Development of the Procurement List 25](#_Toc117597464)

[8 NSW Procurement Policy Framework 26](#_Toc117597465)

[8.1 Procurement Board Directions 26](#_Toc117597466)

[8.2 Enforceable Procurement Provisions 26](#_Toc117597467)

[8.3 NSW Government Action Plan: A ten point commitment to the construction sector 26](#_Toc117597468)

[8.4 NSW Government Supplier Code of Conduct 26](#_Toc117597469)

[8.5 Financial Assessment 27](#_Toc117597470)

[8.6 Small and Medium Enterprise (SME) and Regional Procurement 27](#_Toc117597471)

[8.7 Aboriginal Procurement Policy (APP) 27](#_Toc117597472)

[8.8 Skills and training in construction 28](#_Toc117597473)

[8.9 Modern Slavery Legislation 28](#_Toc117597474)

[8.10 Disability organisations 28](#_Toc117597475)

[9 Infrastructure Advisory Standard Commercial Framework 28](#_Toc117597476)

[Appendix A - Terms and definitions 30](#_Toc117597477)

# 1 Procurement List Overview

## 1.1 What is a Procurement List?

This Procurement List (PL) provides a mechanism for the NSW Government, local councils and universities to procure construction related consulting services above $9 million excluding GST.

This PL has been established in accordance with Part 6 of the Enforceable Procurement Provisions and may be used for a procurement to which the EPP applies. Section 8 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 (refer to section 6.7).

The Application process must be completed via the Supplier Hub website, previously called the eTendering system (refer section 1.5). If the NSW Government is satisfied that the Applicant meets the conditions for participation outlined in section 3.1, 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 a NSW Government Agency to make submissions relating to procurements for which the list was established.

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 related consulting 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 related consulting services |
| A centralised prequalification assessment based on objective criteria to appoint suitable Suppliers | Continuously open Application process |
| Sharing of performance related information and volume allocation to Suppliers across the NSW Government | A streamlined approach to submit a single Application and prequalify for all agencies |

## 1.2 Construction related consulting services above $9M

This PL may be used to procure the following construction related consulting services above $9M excluding GST:

* **Construction related Project Management services**
* **Architectural Services**

The above services fall within the definition of Construction Services as defined in the EPP. Further details on the Work Categories are provided at section 2.

## 1.3 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>

## 1.4 Out of scope

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

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

* Open approach to market (in accordance with Part 4 of the EPP)
* [SCM1191 Consultants in Construction Scheme](https://buy.nsw.gov.au/schemes/consultants-in-construction-scheme)
* [Government Architect's Strategy and Design Scheme](https://buy.nsw.gov.au/schemes/government-architects-strategy-and-design-scheme)

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

## 1.5 Application Process

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

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

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.Schemes.list>

# 2 Work Categories

Applicants can apply for a single or multiple Work Categories. If architectural companies wish to also be considered for opportunities in Construction related Project Management services, they are encouraged to apply for those categories as well.

## 2.1 Construction related Project Management services

### 2.1.1 Project Manager

This category includes all project management functions for the effective planning and delivery of projects to achieve stated benefit realisation objectives.

Project Manager is responsible for all phases of a construction project including planning, delivery to post occupancy completion. It also includes management of construction activities during the delivery phase including project management of planning by the head contractor following award of the construction contract and contract administration.

Upload any applicable licenses or certifications

### 2.1.2 Project Manager Planning and Delivery – Health Infrastructure

Project Management of services to support planning, design, town planning and approval process for Health-related capital works and management of construction activities during the delivery including project management of planning by the head contractor following award of the construction contract and contract administration.

Upload any applicable licenses or certifications.

## 2.2 Architectural Services

### 2.2.1 Architectural – General

Design consultant specialising in Architecture including office buildings, fitout and refurbishment, residences, landscape, industrial and commercial offices. It also, includes drafting services, preparation of design briefs, development of master plans, user consultation, concept and schematic designs, detailed designs, and construction contract documentation.

Upload any applicable licenses or certifications

### 2.2.2 Architecture Planning and Delivery– Health Infrastructure

Provision of services in the planning and documentation of new and refurbished health facilities including the preparation of design briefs, development of master plans, health facility planning, user consultation, concept and schematic designs, detailed designs, and construction contract documentation.

Upload any applicable licenses or certifications

# 3. Application to be included on the PL

## 3.1 Conditions for participation

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

### 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)](https://www.abr.gov.au/business-super-funds-charities/applying-abn)
* If applicable, additional evidence of company registration outside of Australia
* Applicants cannot be a Trust or a Trustee
* Applicants are not applying for the same category of work 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 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 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:
    - Current Ratio >= 1:1
    - Net Tangible Assets -must be >= to 2% of current years revenue
    - Working Capital - must be >= to 2% of current years revenue
    - Debt Ratio – must be <= 1
* A declaration that the Directors of the Applicant have never been insolvent or bankrupt.
* The Applicant must supply their previous two (2) years financial statements and any other relevant information as requested by the Government’s appointed external assessor.
* Once the Application is received the Government’s external assessor will contact the Applicant and provide it with prescribed forms to be completed. The external assessor may contact the Applicant to discuss the financial information provided by the Applicant and seek additional information or clarification, if required

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

### 3.1.3 Commercial ability and technical ability for Construction Related Project Management services

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:

**Insurance Requirements**

* Professional Indemnity Insurance: Applicants can demonstrate that they have current insurance cover for the minimum amount of $10M
* Public Liability Insurance: Applicants can demonstrate that they have current insurance cover for Public Liability. The Public Liability Insurance is to be in the joint names of the Applicant and the Principal, and for an amount not less than $20M. Generally, an annual policy held by the Applicant, which provides appropriate cover suitable for the engagement and which covers the Principal in general terms (not necessarily naming the Principal), is satisfactory.
* Workers’ Compensation: Applicants can demonstrate appropriate cover as required by law.

**Quality Management System (QMS)**

* Demonstrated that adequate QMS systems are in place, including through accreditation/certifications such as:
  + Certification to ISO 9001 through an organization listed by [JAZ ANZ](https://www.jas-anz.org/), or
  + Any equivalent accreditation/certification and the Applicant’s ability to demonstrate that these accreditation/certifications are indeed equivalent to the above.

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

* Demonstrated that adequate WHS systems are in place, including through accreditation/certifications such as:

  + WHS accreditation to ISO 45001 or
  + Staff having relevant qualifications in managing safety with a Certificate 4 (C4) in WHS or above such as a diploma; or
  + Two written examples of second party audit reports where applicant entity has satisfactorily overseen implementation of WHS system on a construction project.

Applicant organisations 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 with the value of the Applicant’s fees above $9M within this category, wherever they have been delivered
* Provided **two client referees** and performance reports for fully completed contracts with the value of the Applicant’s fees above $9M delivered during the last three years within this category, wherever they have been delivered
* That the Applicant should be aware that the GC21 Standard Form Contract is mostly used in NSW for the delivery of construction projects as published at <https://buy.nsw.gov.au/resources/gc21>
* Demonstrated ability to implement and follow (any) public sector/government procurement policies and guidelines, including tendering system, procedures and processes, commercial contract forms and manuals, prequalification schemes, performance management systems, claims resolution process.

The Applicant’s Key Personnel must have the **technical ability** within the nominated work categories to deliver contracts for the NSW Government.

The technical ability of the Applicant’s Key Personnel will be assessed based on the following criteria:

* Formal qualifications relating to project management:
  + 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
  + Any equivalent qualifications and the Applicant’s ability to demonstrate that these qualifications are indeed equivalent to the above
* Minimum five years’ experience during the last eight years within this category
* Nominated Key Personnel desirably have relevant training relating to Conflict Resolution and Alternative Dispute Resolution.
* Experience and ability to undertake the role of the principal's representative.

### 3.1.4 Commercial ability and technical ability for Architectural Services

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:

**Insurance Requirements**

* Professional Indemnity Insurance: Applicants can demonstrate that they are currently insured for the minimum amount of $10M
* Public Liability Insurance: Applicants can demonstrate that they are currently insured for Public Liability. The Public Liability Insurance is to be in the joint names of the Applicant and the Principal, and for an amount not less than $20M. Generally, an annual policy held by the Applicant, which provides appropriate cover suitable for the engagement and which covers the Principal in general terms (not necessarily naming the Principal), is satisfactory.
* Workers’ Compensation: Applicants can demonstrate appropriate cover as required by law.

**Quality Management System (QMS)**

* Demonstrated that adequate QMS systems are in place, including through accreditation/certifications such as:
  + Certification to ISO 9001 through an organization listed by [JAZ ANZ](https://www.jas-anz.org/), or
  + Any equivalent accreditation/certification and the Applicant’s ability to demonstrate that these accreditation/certifications are indeed equivalent to the above.

Applicant organisations 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 with the value of the Applicant’s fees above $9M within this category, wherever they have been delivered
* Provided **two client referees** and performance reports for fully completed contracts with the value of the Applicant’s fees above $9M delivered during the last three years within this category, wherever they have been delivered.

The Applicant’s Key Personnel must have the **technical ability** within the nominated work categories to deliver contracts for the NSW Government.

The technical ability of the Applicant’s Key Personnel will be assessed based on the following criteria:

* Either:
  + Registered with the Architects Registration Board of NSW and qualifications relevant to the Work Category as recognised by the Architects Registration Board of NSW

OR

* + Especially if the Applicant is an overseas-based organisation, a declaration that the Applicant will be required to seek registration with the Architects Registration Board of NSW once included on the PL and before Agencies can invite the Applicant to submissions.
* Minimum five years’ experience during the last eight years within this category

### 3.1.5 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
* A description of the Applicant’s corporate structure
* Years in operation
* Any areas serviced worldwide
* 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)
* Any other applicable certificates and licenses the Applicant may hold.

## 3.2 Assessment of Applications

The government Agency responsible for this PL will assess the Application solely 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
* For international entities, a lookup on websites similar to the ABR that allow validation of the Applicant’s company registration and information
* 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.

## 3.3 Outcome of the Application

### 3.3.1 Notification of the outcome

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

The government Agency responsible for this PL 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.

### 3.3.2 Review, Appeals and Complaints

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

Complaints may include covered procurement complaints which refer to alleged breach(es) of the EPP which must be managed by the NSW Government in accordance with Part 11, Divisions 5 to 7 of thePublic Works and Procurement Act (as amended by the Public Works and Procurement Amendment Act).

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

# 4 Suppliers included on the Procurement List

## Bidding for Work

Only Suppliers, or a limited number of Suppliers, included on the PL may receive invitations from a NSW Government Agency to make submissions relating to procurements for which the list 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 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
* Previously expressed interest with the Agency for a particular procurement listed in the Agency’s annual procurement plan.

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; 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 PL

The system is to enable the Supplier to:

* Arrange to schedule proactively and attend face to face quarterly Consultant Performance meetings with the NSW Government’s Project Manager
* Manage the receipt and storage of completed of Consultant Performance Reports (CPR) signed by the NSW Government. Similarly, Project Managers and Project Directors will manage the receipt of Project Manager Performance Reports and Project Director Performance Reports respectively, which have been provided by the NSW Government
* Manage the receipt and storage of completed and signed copies of CPRs 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 related to the Consultant's work
* 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, an 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 Procurement Policy 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
* Consultant Performance Reports (CPR)
* Project Manager Performance Reports
* Project Director Performance Reports
* 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 immediately inform the government Agency responsible for this PL 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 PL as a new entity.

Suppliers must advise of a change in status by writing with full details to: [consultant.prequal@pwa.nsw.gov.au](mailto:consultantprequal@finance.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 excluded from the PL (as it is no longer eligible to contract with government using the registered ABN)
* The new entity must re-apply for inclusion in the PL.

## 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.

Suppliers are also required to provide certificates of currency for all insurance policies required under this Procurement List before the expiry of the previous certificate.

### 4.5.3 Quarterly reporting

Effective 1 November 2022, the top 50 Suppliers of Infrastructure Advisory Services to government (by spend), are required to submit a Report of Engagements to Treasury every 3 months. Suppliers will generally be notified if they are a top 50 Supplier in respect of a given year by December each year. Data must be provided within the Supplier Report of Engagements template, available via the [buy.nsw](https://buy.nsw.gov.au/resources/infrastructure-advisory-services) website.

Information contained within the Report of Engagements may be shared between NSW Government entities.

Suppliers agree to produce any additional reports or provide additional information requested by Treasury related to an engagement undertaken under the Scheme, as required.

## 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
* That the Supplier does not comply with reporting obligations of the Scheme set out in clause 4.5 of these PL Conditions
* 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.

### 4.6.3 Review, Appeals and Complaints

If a Supplier is not satisfied with the decision made by the NSW Government regarding the Supplier’s exclusion from the PL, the Supplier may request a formal review, appeal the outcomes of the review or make a formal complaint.

Complaints may include covered procurement complaints which refer to alleged breach(es) of the EPP which must be managed by the NSW Government in accordance with Part 11, Divisions 5 to 7 of thePublic Works and Procurement Act (as amended by the Public Works and Procurement Amendment Act).

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

# 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 [consultant.prequal@pwa.nsw.gov.au](mailto:consultantprequal@finance.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)

## 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](https://buy.nsw.gov.au/resources/complaint-management-guidelines).

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

# 6 Other Terms and 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, licensing 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. Information provided by a Supplier in a Report of Engagements may be shared between NSW Government entities.

## 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 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](https://www.legislation.nsw.gov.au/#/view/act/2009/52)

## 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.

Please note that agencies are recommended to use the IA contract framework when procuring under this scheme. Please refer to the [infrastructure advisory services category page](https://buy.nsw.gov.au/resources/infrastructure-advisory-services) on [buy.nsw](https://buy.nsw.gov.au/) for more details and copies of the contract templates and tools.

## 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 $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 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](https://buy.nsw.gov.au/policy-library/policies/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](https://www.legislation.nsw.gov.au/#/view/act/1912/45). 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.](https://buy.nsw.gov.au/policy-library/policy-library-search?form=wrapper&f.Policy+Type%7CPolicyType=board+directions&query=&profile=_default&show=true&action=557003&clive=procurement-nsw-library-web&collection=procurement-nsw-meta&sort=)

## 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](https://buy.nsw.gov.au/policy-library/policies/enforceable-procurement-provisions) 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](http://www.infrastructure.nsw.gov.au/media/1649/10-point-commitment-to-the-construction-industry-final-002.pdf) 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](https://buy.nsw.gov.au/policy-library/policies/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](https://www.industrialrelations.nsw.gov.au/industries/key-industries-in-nsw/building-and-construction/).

## 8.5 Financial Assessment

[Financial assessments](https://arp.nsw.gov.au/pbd-2013-01c-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](https://buy.nsw.gov.au/schemes/financial-assessment-services-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. 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.

## 8.7 Aboriginal Procurement Policy (APP)

This Scheme is aligned to the principles of NSW Government’s [Growing NSW’s First Economy](https://www.aboriginalaffairs.nsw.gov.au/policy-reform/economic-prosperity/prosperity-framework) framework. The framework is a key element of [Opportunity, Choice, Healing, Responsibility and Empowerment (OCHRE)](https://www.aboriginalaffairs.nsw.gov.au/our-agency/staying-accountable/ochre/nsw-government-aboriginal-affairs-strategy).

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](https://buy.nsw.gov.au/policy-library/policies/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)](https://www.training.nsw.gov.au/programs_services/funded_other/islp/index.html).

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.

## 8.9 Modern Slavery Legislation

The [Modern Slavery Act 2018](https://www.legislation.nsw.gov.au/view/html/inforce/current/act-2018-030) (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](https://www.legislation.gov.au/Details/C2018A00153) and the [Modern Slavery Act 2018](https://www.legislation.nsw.gov.au/view/html/inforce/current/act-2018-030) (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](https://buy.nsw.gov.au/buyer-guidance/source/select-suppliers/australian-disability-enterprises) where possible.

# 9 Infrastructure Advisory Standard Commercial Framework

The Infrastructure Advisory Standard Commercial Framework (IA SCF), effective from 1 November 2022, is recommended for use as by Agencies as guidance when engaging Suppliers for the supply of Infrastructure Advisory Services. The objective of the IA SCF is to:

* Standardise recommended daily capped rates, discounts and expenses within all IA Services across NSW Government;
* Increase transparency and visibility of transactions across NSW Clusters and Agencies;
* Standardise and improve the governance and supplier engagement process; and
* Improve quality of deliverables and outcomes.

The IA SCF includes 3 key elements and 3 key enablers:

|  |  |  |
| --- | --- | --- |
| Key elements | Commercial Framework | Description |
| Capped Daily Resource Rates | Maximum daily rates per engagement and role type |
| Daily rate capped based on a standard 8-hour day and in AUD (excl. GST) |
| Discount  Structure | Volume discounts based on contract value (including variations) |
| Discounts applicable to secondments where NSW Government uses IA service providers to augment current teams |
| Expenses  Policy | Defined standards on what expenses are billable |
| Standard cap on expenses as a percentage of total engagement cost |
| **Key enablers** | Resource Types | NSW Government standard 7 resource type definitions. Suppliers to provide rates as per NSW Government resource type definition guide |
| Service Types | NSW Government standard 55 service type definitions for Infrastructure Advisory Services |
| Resource Mix Guides | Provides resource mix guidance to all IA buyers and suppliers |

For more details on how the IA SCF is applied please refer the [Infrastructure Advisory Services category page](https://buy.nsw.gov.au/resources/infrastructure-advisory-services) on [buy.nsw](https://buy.nsw.gov.au/resources/infrastructure-advisory-services).

# Appendix A - Terms and definitions

|  |  |
| --- | --- |
| Term | Definition |
| [ABN](https://www.abr.gov.au/business-super-funds-charities/applying-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 |
| Assignment | Professional Services which deliver specified project outcomes with agreed payments triggered by the delivery of those outcomes or defined deliverables. The risk of the assignment is borne by the supplier. |
| 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   1. pre-erection works 2. construction works 3. repairs, alterations and restorations. |
| Consultants performance report (CPR) | A report completed using the NSW Government’s CPR template or accepted method |
| EPP  Enforceable Procurement Provisions | The [Procurement (Enforceable Procurement Provisions) Direction 2019](https://buy.nsw.gov.au/policy-library/policies/enforceable-procurement-provisions) 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 |
| Infrastructure Advisory Services | Engineering, technical, design & advisory services provided under a fee for service arrangement in relation to any stage in the infrastructure asset lifecycle from concept through to commissioning (and where applicable the ongoing operations and maintenance of the asset) of all economic and social infrastructure assets for the NSW Government |
| 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. |
| Professional Services | Professional Services are a type of external labour used by agencies for specialist advice and assistance. They are provided by external service providers, including consultants.  Professional Services don’t include recurring services delivered for more than a year, for example, repairs, maintenance and technical support services. |
| Regional NSW | Includes all areas within NSW outside the Newcastle, Sydney and Wollongong metropolitan areas |
| Regional Supplier | A business of any size with a registered business address in Regional NSW. |
| SCM1191 | Supplier Prequalification Scheme for Consultants in Construction below $9 million (ex GST) |
| Secondment | Professional Services where there is no defined deliverable and NSW Government is responsible for providing directions and managing the daily work of the resources. In this case, suppliers are responsible for the skills, experience and capabilities of the resources during the engagements and will invoice NSW Government on a time and materials basis. |
| 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 related consulting services valued above $9M (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, refer to section 2 of this document for all Work Categories available under this PL |
| Services | Construction related consulting services valued above $9M |