Date: October 2019

# Procurement (Enforceable Procurement Provisions) Direction 2019

The Procurement (Enforceable Procurement Provisions) Direction 2019 (EPP Direction) requires agencies to conduct procurement activities above identified thresholds in a manner that allows even competition between international and domestic suppliers.

Use this checklist to apply best practices in the Plan, Source, Manage approach.

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|  |   Plan |
| [ ]  | Does the EPP Direction apply to your agency? Covered agencies are listed in [Schedule 1 of the EPP Direction](https://www.procurepoint.nsw.gov.au/policy-and-reform/agencies-covered-epp-direction). |
| [ ]   | Identify the actual or estimated value. Does it exceed the EPP Direction thresholds?[ ]  Construction - $9.247 Million (excl. GST)[ ]  Goods & Services - $657,000 (excl. GST) |
| [ ]  | When calculating estimated value have you included:[ ]  the estimated value of the goods or services[ ]  all remuneration including fees, premiums, commissions, interest and any other revenue streams[ ]  all options, extensions, renewals or any other mechanisms[ ]  all proposed contracts where the procurement is conducted in multiple parts**Where the maximum value cannot be determined, it is considered to exceed the thresholds and the EPP Direction applies.** |
| [ ]  | Is the procurement exempted under Schedule 2 of the EPP Direction? |
| [ ]  | Determine the appropriate market approach:[ ]  Procurement panel (e.g. Whole of Government Contract or panel created from a procurement list)[ ]  Existing procurement list (Prequalification scheme)[ ]  Open market approach[ ]  Limited tendering |
| [ ]  | Determine the market timeframes. Agencies must provide reasonable time for suppliers to prepare and lodge submissions. The minimum time frame is 25 calendar days unless:[ ]  the procurement has been published in the Agency Procurement Plan for more than 40 but less than 365 days[ ]  an open market approach was undertaken within the last 365 days, where it was stated that the procurement would be subject to further market approaches[ ]  the goods and services are available in a commercial market[ ]  the goods and services are required urgently**The minimum time in the market cannot be less than 10 days.** |
| [ ]  | Using a Procurement Panel. Panels established prior to the implementation of the EPP Direction are exempt from its requirements until they expire. They may be used subject to compliance with agency procurement policy. |
| [ ]  | Using an existing Procurement List. Lists established prior to the implementation of the EPP Direction are exempt from its requirements for 12 months from the introduction of the EPP Direction. They may be used subject to compliance with agency procurement policy.You must: [ ]  define the criteria used to evaluate submissions[ ]  include a full description of the required good or services [ ]  identify any certification requirements [ ]  include the conditions for participation, terms and conditions and list any information or documents required from the supplier [ ]  include the open and close dates [ ]  include the delivery and contract duration dates  |
| [ ] [ ]  | Using an Open Market approach. Have you drafted a notice that: [ ]  includes an invitation for suppliers to respond[ ]  Includes agency contact details, for enquiries[ ]  includes a full description of the required good or services[ ]  includes the procurement process being used (multi-stage, open etc)[ ]  includes the conditions for participation[ ]  includes the open and close dates [ ]  includes the delivery and contract duration dates [ ]  includes the statement ‘This procurement complies to the EPP Direction.’ [ ]  includes a statement that the agency intends to conduct negotiations Where using a multi stage approach:[ ]  includes a statement that the agency intends to invite further submissions from a limited number of suppliers who lodge an initial submission [ ]  includes a justification for limiting the number of further submissions[ ]  includes the criteria for selecting those limited suppliers **The notice must be published through NSW eTendering using the proposed or loading RFT function.** |
| [ ]  | Using Limited Tendering. Agencies may only use limited tendering in the strictest of circumstances. Please refer to the EPP Direction (clause 15) for detailed information. Generally, limited tendering may only be used: [ ]  in response to an open approach to market where:* no submissions were received; or
* no suppliers satisfied the conditions for participation; or
* no submission provides value for money; or
* the agency does not award a contract (clause 22); or
* the agency reasonably believes collusion has occurred; and
* the agency has not substantially modified the requirements of the procurement.

[ ]  in cases of genuine and justified extreme urgency [ ]  where technical reasons such as requirements of interchangeability or interoperability with existing equipment demand or, where a change of supplier would incur significant inconvenience or substantial duplication of costs for the procuring government agency[ ]  other circumstances as outlined in the EPP Direction  |

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|  |   Source |
| [ ]  | NSW eTendering.The use of NSW eTendering is mandatory for the publication of Open market approaches and Procurement List invitations. |
| [ ]  | NSW eQuote. The use of NSW eQuote is available to access suppliers on whole-of-government procurement lists. |
| [ ]  | Evaluation. Agencies must award contracts to tenderers who will deliver the best value for money through the published evaluation criteria. Ensure you:[ ]  test criteria practicality by challenging each criterion to predict any risks that might return results that do not present value for money[ ]  only use the original advertised evaluation criteria in negotiations. Any other factors cannot be considered for the purposes of awarding a contract. |
| [ ]  | Debriefing.Agencies must make debriefings available on request and outline the reasons the submission was unsuccessful. |
| [ ]  | Covered procurement complaintsSuppliers must make written complaints directly to the agency head or nominated delegate if they believe an enforceable procurement provision is planned to be, being, or has been breached.Agencies must:[ ]  suspend procurement processes where the supplier’s ability to participate is affected[ ]  where suspension is not in the public interest, issue a Public Interest Certificate[ ]  investigate the complaint and prepare a written report[ ]  attempt to resolve the complaint in a reasonable and prompt mannerAgency failure to respond appropriately may result in the complaint being escalated to the Supreme Court. |

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|  |   Manage |
| [ ]   | Contract Award NoticeAgencies are responsible for ensuring that a Contract Award Notice is completed. The following requirements must be met:[ ]  Publication must be through NSW eTendering[ ]  Publication is to be within 45 days of contract effective date[ ]  Value is to include GST[ ]  Contract class must be included  |