

Supplier Procurement List

Consultants in Construction Procurement List – Agency Guidelines

Construction related consulting services valued above $9M

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More information

Contact the NSW Procurement Service Centre

* Telephone: 1800 NSW BUY (1800 679 289)
* Email: nswbuy@treasury.nsw.gov.au

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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 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 Procurement List.**

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.

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 (PBD-2019-05 Enforceable procurement provisions (PBD 2019-05).

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.**

# Transition Process

Suppliers who desire to be eligible to bid for construction related consulting services above $9M will need to submit a new Application to be included on the Procurement List for Consultants in Construction. If they also have a current prequalification under SCM1191 for work below $9M that prequalification will remain in place.

No action is required for Suppliers prequalified under SCM1191, who want to only bid for construction related consulting services below $9M. Their organisation will continue to be prequalified under SCM1191 and Agencies can continue to include these Suppliers in procurements below $9M (if they are a Certified Consultant) and $250K (if they are a Registered Consultant).

Where to start

## Buy.NSW

All relevant documents related to this Procurement List can be found on Buy.NSW, including: Procurement List Conditions, Guidelines for Applicants, Guidelines for Agencies (this document), and the Infrastructure Advisory Standard Commercial Framework (IA SCF).

## Terms and definitions

Some terms and words used in this document have a defined meaning (refer to Attachment A)

## eTendering

To view and select Suppliers included on the Procurement List[, login to eTendering Domain Admin](https://www.tenders.nsw.gov.au/?event=admin.login) (Scheme Explorer)

## Enquiries

For Scheme enquiries please contact: consultant.prequal@pwa.nsw.gov.au or contact the NSW Procurement Service Centre (details inside front cover).

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

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# 1 Construction related consulting services above $9 million (ex GST)

These guidelines are for Agencies procuring construction related consulting services above $9 million (ex GST) from the Consultants in Construction Procurement List (PL). This document should be read in conjunction with PL Conditions.

The following table provides a summary of the key features of the PL:

|  |  |
| --- | --- |
| Item | Description |
| Scope of the PL | Construction related consulting services above $9M excluding GST*Note: The PL replaces SCM1191 above the $9M threshold.* |
| Work Categories: | Construction related Project Management servicesProject ManagerProject Manager Planning and Delivery – Health Infrastructure Architectural ServicesArchitectural – GeneralArchitecture Planning and Delivery – Health Infrastructure  |
| Compliance with provisions of the Enforceable Procurement Provisions (EPP) | Yes.  |
| Application deadline | None. The PL is always open for Applications |
| Duration of the PL | Indefinite. It will continue to operate until Agencies and Suppliers are notified of its termination (refer to section 6.7 of the PL Conditions) |
| Minimum number of quotes to be sought from Suppliers | Three |
| Criteria Agencies must use when inviting Suppliers for submissions | Agencies inviting a limited number of Suppliers for a specific procurement must do so based on those Suppliers’:Nominated Work CategoryRelevant experience, wherever it has occurredFinancial capacity to undertake the proposed workAvailability and capacity for undertaking the proposed workPreviously expressed interest with the Agency for a particular procurement listed in the Agency’s annual procurement plan |
| Complaints management | Complaints must be managed in accordance with the [NSW Procurement Board Complaint Management Guidelines](https://buy.nsw.gov.au/resources/complaint-management-guidelines). |

# 2 Benefits of the Procurement List

The key benefits for Agencies using this PL include:

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

A centralised prequalification assessment based on objective criteria to appoint suitable Suppliers

Sharing of performance related information and volume allocation to construction Suppliers across the NSW Government.

# 3 Procurement planning

## 3.1 Link to NSW Government Procurement Framework

This PL is relevant to [NSW Procurement’s Plan-Source-Manage approach](https://buy.nsw.gov.au/buyer-guidance) to procurement. It assists Agencies in the planning phase to identify Suppliers who are suitability qualified to tender for construction related consulting services above $9 million.

Please note:

the source and manage phases of procurement are outside of the scope of the PL

agencies using this PL are encouraged to develop their own sourcing strategies in accordance with the NSW Procurement Policy Framework and the EPP.

## 3.2 Application of the EPP

The NSW Procurement Board 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 requires that unless the Direction states otherwise, Agencies:

must not discriminate against any Supplier due to its degree of foreign affiliation or ownership, location, or the origin of its goods and services (EPP clause 8)

must use an open approach to market for all procurements to which the EPP applies, unless the procurement is from a Supplier on a PL that was established in accordance with EPP Part 6 and is for goods or services for which that PL may be used (clause 13c)

must, in determining a limited number of Suppliers who may receive the invitations to make a submission in relation to a procurement, apply the criteria set out in the PL Conditions in selecting those limited number of Suppliers (clause 25, 8).

The PL has been established in accordance with EPP Part 6 and Agencies can therefore use the PL instead of an open market approach as long as the criteria for selecting the limited number of Suppliers set out in section 6.2 are followed.

## 3.3 Estimating the value of the procurement

Agencies need to assess the estimated value of their procurement to correctly determine if they can use Scheme SCM1191 or this PL for procuring construction related consulting services.

As per EPP clause 7, the estimated value of a procurement is an estimate of the maximum value (excluding GST) of the proposed procurement contract made by the Agency, 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.

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.

A procurement must not be divided into separate parts if a purpose of the division is to avoid a relevant procurement threshold.

If the maximum value of a proposed procurement cannot be estimated, the procurement is taken to have an estimated value that exceeds the relevant EPP procurement threshold for the procurement.

Agencies are to note that the threshold for a procurement of construction services is $9.584 million (Ex GST). This PL can be used for procurements above $9M. The lower threshold of $9M has been chosen as it is easier to communicate to Agencies and Suppliers and allows for adjustments to the EPP threshold which may occur in the future.

Agencies undertaking procurement with a value below $9M ex GST can still use this PL but are also encouraged to consider [SCM1191](https://buy.nsw.gov.au/schemes/consultants-in-construction-scheme).

# 4 Work Categories

## 4.1 Construction related Project Management services

### 4.1.1 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.

### 4.1.2 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.

## 4.2 Architectural Services

### 4.2.1 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.

### 4.2.2 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.

*Note: If Agencies intend to engage an architect for Project Management services, Agencies should only choose an architectural Supplier who is also included on the Procurement List for the construction related Project Management services category.*

# 5 Using the Procurement List

## 5.1 Suppliers who are included on the Procurement List

Agencies can view a current list of Suppliers included on the PL when using their eTendering Admin login. Local councils and universities can obtain such information via request to consultant.prequal@pwa.nsw.gov.au

Information about Suppliers is also available online through Scheme Explorer[, log in to eTendering Domain Admin](https://www.tenders.nsw.gov.au/?event=admin.login)

## 5.2 Conditions that Suppliers on the PL meet

Agencies can have confidence that Suppliers included on the PL demonstrated the following capacities and abilities. For further information please refer to the PL Conditions document.

### 5.2.1 Legal capacity

Suppliers have the legal capacity to enter into contracts with the NSW Government. This includes that they registered for an ACN / ABN, that the Supplier indeed is the entity for which that ACN was registered and that the Supplier agreed to the NSW Supplier Code of Conduct.

### 5.2.2 Financial capacity

Suppliers must have the financial capacity to deliver contracts for the NSW Government above $9M. The financial capacity of suppliers is assessed by the Government’s appointed external assessor.

The Applicant should be able to demonstrate all of the followings:

* 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

Suppliers’ financial viability demonstrated during the Application process and may be monitored annually through an external service provider.

It is up to an individual agency, if they opt to have a financial assessment at the time of awarding a contract.

### 5.2.3 Commercial ability

Suppliers have the commercial ability to deliver contracts for the NSW Government. Suppliers have demonstrated that they have:

* Professional Indemnity Insurance in place: All Suppliers demonstrated that they have current insurance cover for the minimum amount of $10M
* Public Liability Insurance in place: All Suppliers demonstrated that they have current insurance cover for Public Liability. The Public Liability Insurance is 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: Suppliers demonstrated that they have appropriate cover as required by law
* If appointed to the construction related Project Management Services category:
	+ Certified Quality Management Systems (QMS)
	+ Certified Workplace Health and Safety Systems (WHS)
	+ Certified Environmental Management System (EMS)
	+ Follow appropriate Project Management Systems.
* If appointed to the Architectural Services category:
	+ Certified Quality Management Systems (QMS)
	+ Follow appropriate Project Management Systems.

### 5.2.4 Technical ability

Suppliers and their key personnel have demonstrated their technical ability to deliver contracts for the NSW Government within their nominated work category.

The Supplier organisation has demonstrated that it has at least two years’ of relevant experience delivering contracts with the value of the Applicant’s fees above $9M within their category.

Suppliers’ key personnel have demonstrated that they have:

* If appointed to the construction related Project Management Services category:
	+ Formal qualifications relating to project management
	+ 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.
* If appointed to the Architectural Services category:
	+ Registered with the Architects Registration Board of NSW, or declared that they would put such registration in place before being invited for submissions
	+ Minimum five years’ experience during the last eight years within this category.

# 6 Inviting submissions from Suppliers

## 6.1 Market approaches guide

Refer to the [Market Approaches Guide](https://buy.nsw.gov.au/buyer-guidance/plan/approach-the-market) on buy.nsw for approaching the Supplier market.

## 6.2 Tendering rules

Agencies inviting tenders/submissions can 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 **must seek submissions from** **three** **Suppliers**.

The key principle of obtaining value for money in the procurement **must** be addressed by the procuring officer in all cases.

Unaccredited agencies are reminded that they must comply with the [assurance process for construction procurements](https://buy.nsw.gov.au/policy-library/policies/assurance-process-for-construction-procurement) valued over $1.3 million (excluding GST).

The above minimum number of Suppliers to be invited does not override any approved procurement governance requirements developed for an Agency’s business. Agencies should check the relevant policies for allowable variances from the tendering rules.

In determining which Suppliers should receive the invitation to make a submission in relation to a procurement, Agencies **must** **apply the criteria set out in the PL Conditions** in selecting those limited number of Suppliers (EPP clause 25, 8), namely the 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

A Supplier who is not invited to make a submission can potentially lodge a complaint with the Agency under Part 11 of the Public Works and Procurement Act alleging that the Agency has not complied with EPP provisions regarding invitations to submissions. This includes circumstances where they allege that the Agency has not applied the selection criteria set out in the notice establishing the PL.

Agencies must further ensure they understand the EPP and conform with the EPP when seeking quotes and engaging Suppliers off this PL.

## 6.3 eTendering

An Agency should use the eTendering Admin Domain to release a tender to the market.

## 6.4 Contractual agreements

The contractual agreement between the Agency and the Supplier is outside the scope of this Scheme. Agencies are recommended to use the IA contract framework when procuring under this scheme. Using standard contracting documents helps achieve a standardised approach to risk allocation when Agencies buy 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.6.5 Trusts and trustees

Trustees (e.g. Trustee for the Smith Family Trust) and Trusts (e.g. Smith Family Trust) are not eligible for inclusion on the PL.

## 6.6 Insurances

For this PL, Applicants provide evidence of current insurance cover (refer section 5.2.3) at the time of application. However, Agencies should ask for a proof of ongoing cover for public liability, workers compensation and/or professional indemnity insurance (as required) at the tendering and contract award stages.

## 6.7 Relevant occupational licences or certification

Applicants provide evidence of all necessary licenses for work categories which have this as a mandatory requirement. The type of license will be determined by the NSW Government licensing Agency (or equivalent) and various work categories under this scheme prescribe the mandatory licensing requirements.

Agencies are advised to apply their own due diligence at the tendering stage to ensure the relevant certificates and licenses are current.

# 7 Consultant performance

## 7.1 Monitoring of Supplier performance

Suppliers included on the PL are subject to a process of continuous monitoring and review in all matters related to the PL including the Supplier’s performance and project outcomes.

Agencies are encouraged to support PW, which is the Agency responsible for the PL, in administering the PL by monitoring the performance of the Suppliers.

Specifically, this includes the development of Consultant Performance Reports (CPR) and their regular provision to PW.

Agencies are further encouraged to monitor the following items and report any findings to PWA:

**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 of the [Infrastructure Skills Legacy Program (ISLP)](https://www.training.nsw.gov.au/programs_services/funded_other/islp/index.html).

**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.7.2 Supplier exclusion from the Procurement List

The NSW Government may exclude a Supplier from the PL. Reasons for exclusion specifically include that the NSW Government has reasonable belief regarding any of the following:

That the Supplier has acted in contravention to the NSW Supplier Code of Conduct

Failure to obey an adjudicator’s determination under Building and Construction Industry Security of Payment Regulation 2020 (NSW), subject to other legal rights

That the Supplier is bankrupt or insolvent

That the Supplier has made one or more false declarations

That there has been a significant deficiency or persistent deficiencies in the performance by the Supplier of any substantive requirement or obligation under a prior contract

The Independent Commission Against Corruption (or an equivalent body in a jurisdiction in Australia), within the previous 10 years, has made a finding or has been of the opinion that the Supplier has engaged in corrupt conduct

That the Supplier has failed to pay taxes,

That the Supplier has been convicted of an offence punishable by imprisonment for a term of 2 years or more, or by a fine of $200,000 or more

That the Supplier has been found guilty of professional misconduct or

Unprofessional conduct in a jurisdiction in Australia.

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

# 8 Complaints

Any complaint from a Supplier that alleges that the Agency has contravened an enforceable provision in the EPP Direction must be managed in accordance with relevant provisions in Part 11 of the Public Works and Procurement Act (PWP Act), specifically Divisions 5, 6 and 7. This includes requirements to investigate the complaint, take action to attempt to resolve the complaint and to prepare a report. In some circumstances an Agency may need to suspend a procurement while the complaint is investigated.

Agencies are encouraged to manage any complaint in accordance with the [NSW Procurement Board Complaint Management Guidelines](https://nswdfsi-search.squiz.cloud/s/redirect?collection=procurement-nsw-meta&url=https%3A%2F%2Fbuy.nsw.gov.au%2F__data%2Fassets%2Fword_doc%2F0010%2F601894%2Fcomplaint_management_guidelines_1.docx&auth=ww5Lvfyrqh4HNltiRho30w&profile=_default&rank=9&query=Complaint+Management+Guidelines).

As the PL is for procurements to which the EPP applies, Agencies are to note:

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, 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 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 Supplier taking the matter to the Supreme Court.

The Supreme Court may allow a 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 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..

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

# 9 Review and Development of the Procurement List

The Department provides a small, dedicated team to administer the PL and assist agencies and Suppliers with enquiries and feedback for continuous improvement. Contact consultant.prequal@pwa.nsw.gov.au

# 10 NSW Procurement Policy Framework

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

Suppliers and Agencies must at all times comply with all relevant laws and policies, including but not limited to those listed in this section. A Supplier’s breach of any relevant policies and/or laws may result in its 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.

## 10.1 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=)

## 10.2 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.

## 10.3 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.

## 10.4 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/).

## 10.5 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, provide service or supply goods.

The Agency responsible for this PL uses financial assessments during the Application process on Suppliers that are included on the PL (refer PL Conditions section 4.5.1). The NSW Government agencies engage a service provider prequalified under the [Financial Services Prequalification Scheme](https://buy.nsw.gov.au/schemes/financial-assessment-services-scheme) SCM2491 to undertake such assessments, if it is required.

## 10.6 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 related consulting projects. Applicants are expected to select only those regions that their current capacity and capability can support.

## 10.7 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.

## 10.8 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.

For [further information refer to buy.nsw](https://arp.nsw.gov.au/pbd-2020-03-skills-training-and-diversity-in-construction/)

## 10.9 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>

## 10.10 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

# 11 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) |
| DiscountStructure | Volume discounts based on contract value (including variations) |
| Discounts applicable to secondments where NSW Government uses IA service providers to augment current teams |
| ExpensesPolicy | 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).

# Attachment 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, including1. 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 |
| EPPEnforceable 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 |
| PLProcurement 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) |
| Secondments | 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 |
| Works  | Construction related consulting services valued above $9M |