

NSW Government  
**Procurement  
Policy Framework**



## Section 4

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**Aboriginal owned business** refers to any business that is an Aboriginal owned business through recognition by an appropriate organisation, such as:

- NSW Indigenous Chamber of Commerce
- an organisation representing Aboriginal owned businesses in another state or territory that is a member of the First Australians Chamber of Commerce and Industry
- Supply Nation.

**Aboriginal Participation Plan** describes a supplier's commitments under the Aboriginal Procurement Policy or the Aboriginal Participation in Construction (APIC) policy, and how it will meet those commitments.

**Aboriginal Participation Strategy** describes how an agency is working with Aboriginal owned businesses to identify and develop business and employment opportunities and set measurable targets for Aboriginal participation, through goods and services procurement activities.

**Agency** refers to a government agency as defined under [s.162 of the Public Works and Procurement Act 1912](#) and includes a government sector agency (within the meaning of the [Government Sector Employment Act 2013](#)), a NSW government agency, and any other public authority that is constituted by or under an act or that exercises public functions. It excludes state owned corporations and local councils.

**Agency head** refers to the person holding the highest level of delegation within a department or an agency and includes Secretaries and Chief Executive Officers. The term 'agency head' includes a delegate of the agency head.

**Annual Procurement Plan** means a planning document that captures all types of procurement initiatives planned by the procurement function, including sourcing, contract management and category management activities. An abridged version is published on the eTendering website covering planned procurements that may result in an open tender and major or strategic initiatives that may generate procurement.

**Arrangement** is a description of a contract, standing offer, scheme, or any other form of agreement between a government agency/s and supplier/s, whether or not the arrangement creates a legal relationship between the parties. There are various models of supplier arrangements in place, including:

- contracts between an agency and a supplier
- standing offer agreements between agencies and suppliers, which establish the legal arrangements for contracts relating to the purchase of goods or services
- registration lists and prequalification schemes, under which agencies then enter into contracts.

While these models create different legal relationships between agencies and suppliers, this framework refers to these as 'arrangements' for the sake of simplicity.

**Capital expenditure** is expenditure on acquisition, maintenance or improvement of non-current (i.e. if the financial benefit extends beyond the current financial year) fixed assets, such as buildings, equipment or land.

**Capital project** is a project primarily comprised of fixed assets such as infrastructure, equipment, property developments or operational technology.

**Circular Economy** is an economy that values resources by keeping products and materials in use for as long as possible.

**Competitive neutrality** is the principle that government business activities should not enjoy net competitive advantages over their private sector competitors due to their public sector ownership. Competitive neutrality removes potential market distortions and promotes an efficient allocation of resources between public and private businesses.

**Construction** means services relating to the construction of buildings or works, including:

- pre-erection works,
- construction work,
- repairs, alterations and restorations.

**Covered procurement** is a procurement that is covered by the [IPA Guidelines](#).

**Disability employment organisation** is an entity that has a principal purpose to provide employment to persons with a disability.

**Enforceable Procurement Provisions** is defined in Schedule 1 [1] of the [Public Works and Procurement Amendment \(Enforcement Act 2018\)](#) and means a provision of a board direction or policy (or a provision of a document referred to in a board direction or policy) that is expressed to be an enforceable procurement provision by the direction or policy.

**Environmental Management Plan** is a site-specific plan that identifies environmental aspects and significant impacts of a construction project, and how contractors will manage environmental performance and conformity with the environmental conditions of the contract.

**Environmental Management System**

comprises the elements of an organisation's overall management system that ensure environmental aspects of its activities, products and services, and their significant impacts, are identified and systematically managed.

**Expression of Interest (EOI)** is the process of seeking the interest of service providers capable of undertaking specific works or services, to provide information on that capability or a detailed proposal to undertake work. It is usually the first stage of a multi-stage tender process.

**Goods and services** means any type of right, interest or thing, both physical and intangible, which is legally capable of being owned (goods); and work performed by individuals or a group of individuals for others (services). In this framework, *goods and services* excludes any item or activity defined as *construction*, unless otherwise specified.

**Government Procurement System for Construction**

consists of guidelines and procedures for the selection of procurement strategies, contract risk allocation, supplier selection (including prequalification schemes), tendering and formal dispute resolution, and contract templates for government construction works.

**Hedging** is a form of risk management strategy used to limit or offset the probability of loss from fluctuations in prices (e.g. currencies or commodities).

**Human services** mean the programs, facilities or services provided to meet the health, welfare and social needs of individuals, families and communities. This may include, for example, education, health, and community services provided across NSW, or as defined by the Human Services Data Hub Taxonomy.

**Information and Communications Technology (ICT)**

is a subset of goods and services consisting of information and telecommunications technology, platforms, software, hardware and services.

**Inspection and Test Plans (ITPs)** record all inspection and testing requirements relevant to a specific process to ensure quality standards are met. ITPs document the procedure to be undertaken and the evidence to be provided (including reviews and verification points) to verify that a work process/product or activity conforms to the specified requirements.

**International Procurement Agreement (IPA)**

is defined in Schedule 1 [1] of the [Public Works and Procurement Amendment \(Enforcement\) Act 2018](#) and means an international agreement that applies to procurements by Australian Governments and covers procurements by NSW agencies.

**Limited tender** is where an agency approaches one or more potential suppliers of its choice to make submissions, sometimes termed a direct negotiation if only one supplier is approached. It may be used for specialist work or circumstances where only one or a limited number of service providers are known to be able to fulfil the contract, e.g. markets controlled by a monopoly or oligopoly.

**Local business** has the same definition as an SME.

**Measures** include any law, regulation, policy, procedure, requirement or practice.

**Medium business** is a business with 20-199 FTEs.

**Modern slavery** includes any conduct involving the use of any form of slavery, servitude or forced labour to exploit children or other persons taking place in the supply chains of government agencies or non-government agencies.

**Non-government organisations (NGOs)** means a non-profit organisation that is independent from government. A non-profit organisation is one which 'is not operating for the profit or gain of its individual members, whether these gains would have been direct or indirect'.

**Notifiable WHS incident** is an incident involving the death of a person, or serious injury or illness of a person or a dangerous incident, (as defined in the WHS Act 2011) that must be notified to SafeWork NSW.

**Open tender** is a publicly advertised tender that is open to any interested supplier. Open tenders can include multi-stage procurements where the first stage is an open approach to market.

**Panel** means a group of suppliers that have been selected, usually through an open procurement process, to provide goods or services, including construction services, at agreed conditions. A standing offer is established with each supplier covering the same or similar goods or services, with a basis for pricing and for a specified period.

**Piggybacking** is where one agency has established an arrangement and has made the arrangement available to other agencies.

**Preference** refers to any law, regulation, policy, procedure, requirement or practice that allows favourable treatment of specified groups of suppliers, e.g. SMEs.

**Prequalification Scheme**, also known as Multi-Use Lists, Approved Lists or Procurement Lists, means a list of suppliers that meet relevant experience and qualification standards to be engaged for specified business opportunities.

**Principal contractor** is a contractor that contracts with an agency as the client and is appointed as principal contractor for nominated work, meaning they are authorised to have management or control of the workplace and discharge the duties of a principal contractor under the WHS Regulation 2017.

**Probity** is uprightness, honesty, proper and ethical conduct and propriety in dealings, and can be defined as complete and confirmed integrity, uprightness and fairness in a particular process.

**Probity advisers** act as part of a procurement/sale project team and work contemporaneously with project managers. The principal role of a probity adviser is to provide probity advice and solutions throughout the transaction.

**Probity auditors** work independently of a project team and are engaged to verify that processes followed during a procurement/sale are consistent with government regulations and best practice principles, primarily after the fact.

**Procurement** refers to a process that begins with the basic 'make or buy' decision, and then spans the 'whole life' of supplier/construction arrangements. It includes the definition of business needs, designing and implementing arrangements, monitoring and managing contract and supplier performance, and reviewing outcomes to assess the effectiveness of arrangements.

**Project WHS Management Plan** sets out the specific WHS resources, consultation and risk management processes, responsibilities, procedures and practices, for a particular project. It describes how the supplier intends to implement its Corporate WHS Management System for the whole of the project, and Safe Work Method Statements.

**Proposed RFT** is an early notification to the market of an upcoming business opportunity or tender but is not a guarantee that the RFT will proceed.

**Purchasing** is the process of buying or purchasing from an existing procurement arrangement or directly from a supplier.

**Quality Management Plan** is a project or contract-specific plan developed by applying an appropriate Quality Management System to plan and carry out the work involved, to ensure conformity with the requirements for the project/contract and to manage quality risks.

**Quality Management System** provides a structure, including documentation and processes, which enables the delivery of products and services to be controlled and managed to consistently meet the specified requirements.

**Recurrent expenditure** is expenditure which does not result in the creation or acquisition of fixed assets (new or second-hand). It consists mainly of expenditure on wages, salaries and supplements, purchases of goods and services and consumption of fixed capital (depreciation).

**Regional business** is a business located in any area within NSW outside the Newcastle, Sydney and Wollongong metropolitan areas. A list of regional local government areas is available on [ProcurePoint](#).

**Request for Proposal (RFP)** is a request to the market to provide preliminary proposals or ideas for a business solution. A second stage may involve short listed tenderers being invited to tender for the contract or, where a best solution is sought, negotiation with the preferred service provider on the final requirements and price.

**Request for Tender (RFT)** means an invitation, by advertisement or directly, to respond to sourcing requirements by lodging a tender response. It covers all forms of tendering, including an invitation or request for quotation (RFQ) or proposal (RFP), offers, EOI, pre-registration for RFQ or RFP.

**Selective tender** means a selective procurement method whereby the procuring entity invites only qualified suppliers to submit a tender. Suppliers may be qualified via a prequalification scheme; an EOI, RFP or similar process; or due to some other qualification, accreditation, license or provision.

**Small business** is a business with 1-19 FTEs, including sole traders and start-ups.

**Small or medium enterprise (SME)** refers to an Australian or New Zealand based enterprise with fewer than 200 full time equivalent (FTE) employees.

**SME and Sustainability Criteria** is a non-price-evaluation criterion of at least 15 per cent, which considers how potential suppliers will support the government's economic, ethical, environmental and social priorities. A minimum of 10 per cent of the total non-price criteria must be allocated to SME participation consistent with relevant exemptions in IPAs.

**Standard Commercial Framework** is a framework to engage business advisory services that provides standard definitions and capped rates for engagement and role types, a discount structure, capped expenses and a target resource mix for engagements.

**Standing Offer** is an arrangement setting out the terms and conditions, including a basis for pricing, under which a supplier agrees to supply specific goods and services, including construction services, to an eligible buyer for a specified period.

**Substantial (FX) Risk** is a foreign exchange risk considered to be substantial by Treasury and TCorp based on the size and nature of the exposure, duration and size of the procurement, frequency of the risk occurrence, timing and level of volatility of foreign currency/ies to the A\$.

**Supplier** is an entity or person who has entered into a contract with an agency.

**Sustainable procurement** is a process whereby organisations meet their needs for products, services, works and utilities in a way that achieves value for money on a whole-of-life basis in terms of generating benefits not only for the organisation, but also to society and the economy, while minimising damage to the environment.

**Tenderer** is an entity or person who has responded to an RFT or other approach to market.

**Unsolicited proposal** is an approach to government from a proponent over a commercial proposition, where the government has not requested the proposal. This may include proposals to build and/or finance infrastructure, provide goods or services or undertake a major commercial transaction.

**Value** is the genuine, estimated value over the proposed term of an acquisition (not a value per annum). Unless specified otherwise, value is exclusive of GST. If an agency undertakes more than one procurement activity with the same supplier for the same goods and services within a reasonable period, the value of all the procurements should be added together (that is, order splitting is prohibited).

**Whole-of-government arrangement** means any procurement arrangement, including whole-of-government contracts and prequalification schemes, under which an agency provides for the purchase of goods or services, including construction, by that agency, all other NSW government agencies and eligible buyers.

**Whole-of-government contract** means a standing offer or panel arrangement under which an agency provides for the purchase of goods or services, including construction, by that agency, all other NSW government agencies and eligible buyers.

**WHS Management Plan** sets out the arrangements to manage work health and safety on a construction project. It is less detailed than a Project WHS Management Plan.

**WHS Management System** is the overall management system, including organisational structure, planning activities, responsibilities, practices, procedures, processes and resources, for developing, implementing, achieving, reviewing and maintaining the supplier's WHS policy, and so managing WHS risks.

# Document control

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## Document approval

Approved by the Procurement Board: 20 February 2019

Administrative updates approved by NSWCPD: 4 October 2019

## Document version control

Version	Status	Date	Prepared by	Comments
1.0	Final	20 February 2019	Emma Cooper	Initial version approved by Procurement Board
1.1	Final	1 July 2019	Emma Cooper	Administrative and approved policy updates. Includes board directions and policies approved after Procurement Board approval and prior to commencement date of 1 July 2019: <ul style="list-style-type: none"><li>• PBD-2019-01 Engagement of Professional Services Suppliers, issued 26 March 2019</li><li>• PBD-2019-02 Telecommunications Procurement, issued 29 April 2019</li><li>• PBD-2019-03 Access to Government Construction Procurement Opportunities by SMEs, issued 1 May 2019</li><li>• PBD-2019-04 Approved Procurement Arrangements, issued 1 July 2019</li><li>• Government Resource Efficiency Policy, revised 21 February 2019</li><li>• Circular Economy Policy Statement, released 25 February 2019</li><li>• TPP19-03 Recurrent Expenditure Assurance Framework, issued 31 January 2019</li><li>• Replace references to Procurement (Enforceable Procurement Provisions) Direction 2019 with PBD-2017-06 International Procurement Agreements, as new Direction not yet in effect.</li><li>• Adds Construction Industry Leadership Forum (CILF) Notes, approved by Procurement Board 5 June 2019.</li></ul>

Version	Status	Date	Prepared by	Comments
1.2	Final	1 October 2019	Emma Cooper	<p>Incorporated policy updates and omissions identified after release of version 1.1:</p> <ul style="list-style-type: none"> <li>• PBD-2019-05 Enforceable Procurement Provisions, released 16 September 2019, effective date 29 November 2019</li> <li>• Public Works and Procurement Regulation 2019, replacing 2014 Regulation that was remade 1 September 2019</li> <li>• DFSI-2019-01 NSW Government Operational Communications Strategy, released 15 July 2019.</li> </ul> <p>Added:</p> <ul style="list-style-type: none"> <li>• Bid Cost Contributions Policy for construction projects valued over \$100 million, released December 2018</li> <li>• Construction and demolition waste management requirements per the <i>Protection of the Environment Operations Act 1997</i>, Standards for Managing Construction Waste in NSW, and Construction and Demolition Waste Management Toolkit</li> <li>• TC12-12 Mandatory use of the TMF for all Government insurance requirements, released 3 May 2012</li> <li>• TC16-11 Mandatory principal arranged insurance for all major capital works projects, released 15 August 2016.</li> </ul>

### Review Date

This policy will be updated on a quarterly schedule to include new and amended policies.

The policy will be formally reviewed by July 2021.

It may be reviewed earlier in response to post-implementation feedback from agencies, the Procurement Leadership Group, the Construction Leadership Group and the Procurement Board.

