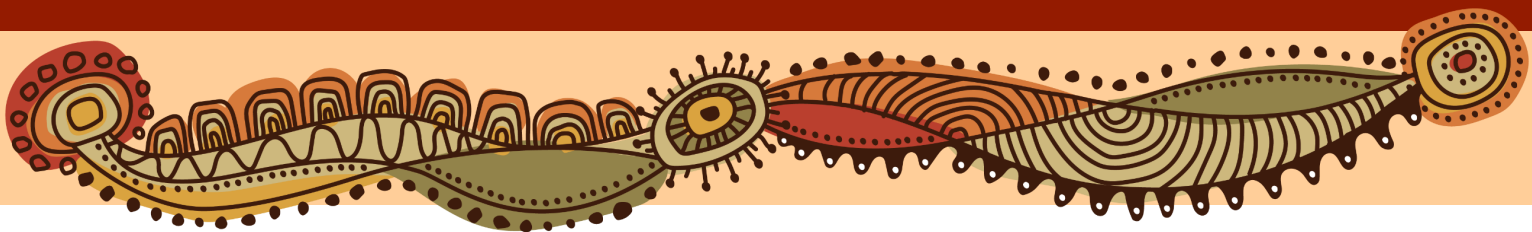


NSW Government Aboriginal Procurement Policy review discussion paper

Policy review discussion paper

December 2022



Acknowledgment of Country

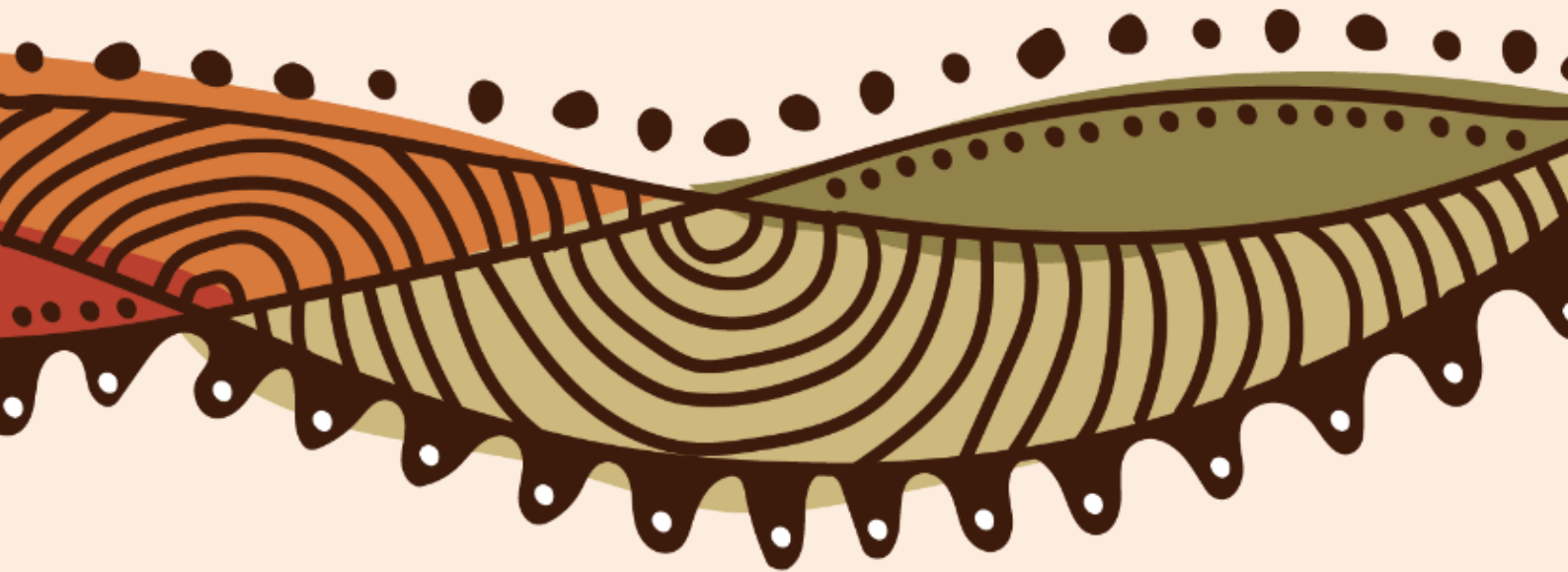
We acknowledge that Aboriginal and Torres Strait Islander peoples are the First Peoples and Traditional Custodians of Australia, and the oldest continuing culture in human history.

We pay respect to Elders past and present and commit to respecting the lands we walk on, and the communities we walk with.

We celebrate the deep and enduring connection of Aboriginal and Torres Strait Islander peoples to Country and acknowledge their continuing custodianship of the land, seas and sky.

We acknowledge the ongoing stewardship of Aboriginal and Torres Strait Islander peoples, and the important contribution they make to our communities and economies.

We reflect on the continuing impact of government policies and practices, and recognise our responsibility to work together with and for Aboriginal and Torres Strait Islander peoples, families and communities, towards improved economic, social and cultural outcomes.



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1 Introduction

The NSW Government is committed to working with Aboriginal and Torres Strait Islander Communities and businesses to provide significant opportunities for increased economic participation within the State's economy. The Aboriginal Procurement Policy aims to facilitate opportunities to increase skills and economic participation of Aboriginal and Torres Strait Islander Communities via government procurement.

This discussion paper seeks feedback on how the Aboriginal Procurement Policy has met its objectives. We want to understand the issues that are important to all stakeholders who interact with the policy. Your feedback will help us to create a more effective policy.

2 Discussion questions

1. What is working well in the policy?
2. How can we make it easier for Aboriginal businesses to work with the NSW Government under the APP?
3. What, if any, additional policy measures should be included? Why?
4. How should APP targets be set?
5. Should the contracts target be extended to include construction contracts alongside goods and services?
6. Please describe the different challenges for Aboriginal businesses operating in metropolitan regions compared to regional and remote areas.
7. What support services or tools should the government provide to support Aboriginal businesses?

3 Statistics

NSW Aboriginal business sector

There are **737** Supply Nation-registered businesses operating in NSW, which is the most of any state or territory.

While NSW is home to many First Nations businesses, businesses registered with Supply Nation made up only **0.08 per cent** of all NSW businesses in 2020-21.

Around 60 per cent of NSW Supply Nation-registered businesses were created in the past five years, compared with **41 per cent** of non-Indigenous businesses.

The majority, **58 per cent**, of NSW First Nations businesses operate in the business services and construction sectors.¹

We will continue to build upon our relationships with other service provider organisations to help us deliver more robust data in the future.

Aboriginal Procurement Policy statistics

In the first 6 months of the Aboriginal Procurement Policy going live in January 2021, **\$100 million** was spent with and **126** contracts were awarded to Aboriginal businesses.

From July to December 2021 **\$97 million** was spent with and **264** contracts were awarded to Aboriginal businesses.²

Aboriginal Procurement Policy targets for FY22/23

Cluster	1% addressable spend targets	3% goods and services contracts targets
Customer Service	\$2.7 million	8
NSW Education	\$27.9 million	12
NSW Health	\$23.0 million	63
Planning and Environment	\$11.8 million	22
Enterprise, Investment and Trade	\$1.2 million	3

¹ NSW Treasury, The NSW First Nations Business Sector, 2022

² NSW Treasury, 2022

Cluster	1% addressable spend targets	3% goods and services contracts targets
Premier and Cabinet	\$0.7 million	8
Regional NSW	\$7.1 million	4
Stronger Communities (Communities and Justice)	\$14.2 million	18
Transport	\$61.3 million	70
NSW Treasury	\$0.6 million	5
Total	\$150.4 million	213

See page 13 for further detail on the Aboriginal Procurement Policy targets.

4 Background

Aboriginal Participation in Construction Policy 2015 and 2018

The Aboriginal Participation in Construction (APIC) Policy was implemented by the NSW Government Procurement Board to support greater participation by Aboriginal and Torres Strait Islander peoples in Government construction and infrastructure projects across NSW.

The APIC Policy came into effect on 1 May 2015 and, from 1 July 2016, mandated that head contractors on NSW Government construction and infrastructure projects were required to direct 1.5% of the contract value to spend on Aboriginal participation on certain contracts. Its goal was to stimulate growth opportunities for Aboriginal people in the construction industry through employment and engagement of Aboriginal businesses.

The policy applied to the following construction projects undertaken by NSW Government agencies:

- Construction related building maintenance and civil engineering
- Construction related support activities, such as financial, advisory, architectural, and professional services, where it was considered appropriate to achieve the APIC policy objectives
- Joint public/private sector
- Those undertaken on land not owned by the Government or where the built asset would be owned by a non-Government entity.

The 2015 and 2018 APIC Policy was mandatory for three categories of construction projects:

- Category 1: Projects nominated by an agency that were primarily directed to one or more Aboriginal communities. This included projects where an Aboriginal community was the sole or predominant beneficiary, a key user group or a predominant stakeholder
- Category 2: All other construction projects where the estimated value exceeded \$10 million (excluding GST)
- Category 3: All other construction projects where the estimated value was over \$1 million (excluding GST).

Aboriginal Procurement Policy 2018

The first Aboriginal Procurement Policy came into effect on 1 July 2018 and applied to goods and services procurement, excluding construction procurement. The policy, in conjunction with the 2018 APIC Policy, aimed to stimulate and support employment opportunities for Aboriginal and Torres Strait Islander people and businesses.

Under the policy, all NSW Government agencies were required:

- to publish an annual Aboriginal Participation Strategy that outlined how the agency would meet its Aboriginal participation obligations including, for contracts valued over \$10 million, identifying and addressing upcoming opportunities for Aboriginal participation.

- for contracts valued up to \$250,000, first consider procuring from Aboriginal-owned businesses on pre-qualification schemes before proceeding to market, where appropriate
- apply an Aboriginal participation non-price evaluation criteria in relevant tenders where opportunities exist
- consider opportunities for Aboriginal participation in all major procurement activities over \$10 million (excluding GST) and document these opportunities in the procurement strategy
- report contracts valued over \$50,000 (excluding GST) entered into with an Aboriginal owned business to the Procurement Board within 45 days after the contract became effective.

NSW Government agencies could also directly negotiate with suitably qualified Aboriginal businesses, that could demonstrate value for money and delivery of quality goods and services, for procurements valued up to \$250,000.

For goods and services contracts covered by the Aboriginal Procurement Policy and valued over \$10 million (excl. GST), suppliers were required to:

- provide an Aboriginal Participation Plan as part of the tender response identifying how the supplier will meet any contract requirements and targets for Aboriginal participation
- provide monthly progress reports against the Aboriginal Participation Plan to the contracting agency.

5 2019 Policy review

In 2019, NSW Government conducted a review of the Aboriginal Procurement Policy (APP) and Aboriginal Participation in Construction (APIC) policy. This review undertook extensive consultation with Aboriginal businesses, non-Aboriginal businesses, the broader community, and NSW Government agencies. This allowed research to include the widest possible range of perspectives and opinions on how to better include Aboriginal businesses in the NSW Government supply chain and help these businesses build capacity and capability.

The review made 38 recommendations across nine themes. As at December 2022, 35 of the recommendations have been implemented and three are in progress.

Recommendations

Status	Recommendation
Simplify and align	
Implemented	Combine the APP and APIC policy into a single NSW Aboriginal Procurement Policy
Implemented	Simplify policy, requirements and reporting
Implemented	Align with Commonwealth Indigenous Procurement Policy where relevant
Implemented	Retain 'Aboriginal' as the key policy naming convention
In progress	Agencies to include construction projects in the annual Aboriginal Participation Strategy
3% Contract target- goods and services	
Implemented	Clusters to award 3% of goods and services contracts to Aboriginal businesses by end 2021
Implemented	Clusters & NSW Treasury to agree an annual target for goods and services contracts to be awarded to Aboriginal businesses per year, based on 3% of the cluster's average number of contracts for the past three financial years
Implemented	Clusters may count the head contractor's sub-contracts with Aboriginal businesses toward their contract target
1% Spend target- all addressable spend	
Implemented	Clusters to direct 1% of addressable procurement spend toward Aboriginal businesses by end 2021. This target will include both construction, goods and services procurement spend
Implemented	Clusters & NSW Treasury will agree an annual target spend to be directed to Aboriginal businesses based on 1% of the cluster's average addressable spend for the past three financial years

Status	Recommendation
1.5% Aboriginal participation on high value contracts	
Implemented	For all contracts over \$7.5m clusters are required to direct at least 1.5% of the contract value to Aboriginal participation. Agencies will have discretion not to apply this requirement if opportunities for Aboriginal participation do not exist (e.g. purchase of equipment from overseas). However, agencies must include evidence in their procurement strategy or relevant documentation that supports the decision
Implemented	Raise the threshold at which construction contracts must include Aboriginal participation requirements from \$1m to \$7.5m
Implemented	Lower the threshold at which goods and services contracts must include Aboriginal participation requirements from \$10m to \$7.5m
Implemented	The requirements for suppliers to direct unspent Aboriginal participation funds to Master Builders Association or Literacy for Life will be removed
Implemented	Unspent Aboriginal participation funds will be directed to Training Services NSW programs that focus on training for Aboriginal people or capacity building for Aboriginal-owned businesses. The NSW Government will publish information on the value of unspent funds directed to Training Services NSW and the programs supported
3,000 FTE employment opportunities	
Implemented	Support 3,000 FTE employment opportunities for Aboriginal people from construction, and goods and services contracts by the end of 2021
Purchasing permissions	
Implemented	Retain the recommendation that clusters should give first consideration to Aboriginal businesses on prequalification schemes
Implemented	Retain the purchasing permission that allows clusters to directly negotiate with suitably qualified Aboriginal businesses up to \$250,000
Implemented	Retain the purchasing permission that allows clusters to run a closed tender with Aboriginal businesses on prequalification schemes up to \$1m
Registration bodies	
Implemented	Retain the requirement for Aboriginal businesses to be registered with the NSW Indigenous Chamber of Commerce (NSW ICC) or Supply Nation, except where engaging an Aboriginal not-for-profit (NFP) or non-government organisation (NGO). In these instances, agencies must make suitable enquiries to satisfy themselves the NFP or NGO is controlled by Aboriginal people or entities
Implemented	Remove the First Australians Chamber of Commerce and Industry (FACCI) as a registration organisation for Aboriginal-owned businesses, as they do not maintain a readily accessible, online list of suppliers
Reporting	
Implemented	Remove the agency requirement to disclose contracts with Aboriginal-owned businesses valued over \$50,000. Revert to the statutory requirement of disclosing contracts over \$150,000. Agencies may manually disclose additional contracts or provide data from contract management systems

Status	Recommendation
Implemented	Implement new reporting portal with higher functionality and ease of use
Implemented	Publish targets and cluster performance toward the targets
Implemented	Regularly audit a percentage of contracts, ranging from desktop to site audits. Require agency contract managers to sign an audit self-attestation. Conduct an independent random audit of five per cent of contracts annually (at a whole of government level).
Support and guidance	
In progress	Provide more support and guidance to Aboriginal businesses and agency staff to apply the policy, through both guidance documents and face-to-face sessions
In progress	Agency procurement teams to simplify tender documentation and language where possible to ensure requirements are understood
Implemented	Agencies must offer tender debriefs to Aboriginal businesses where reasonably requested
Implemented	Encourage agencies to set aside funding for third party tender writing support for Aboriginal businesses
Implemented	Identify an agency-based policy 'champion' to support businesses and staff, with their team's email address published so businesses may make contact
Implemented	NSW Treasury to create a Community of Practice to support policy implementation
Implemented	NSW Treasury to implement a 'concierge' service to assist Aboriginal businesses to be registered on prequalification schemes
Implemented	NSW Gov to increase collaboration with NSWICC and Supply Nation to help guide more Aboriginal businesses onto prequalification schemes and build business capability
Implemented	Hold networking opportunities for head contractors, Aboriginal businesses and buyers, particularly in regional NSW, including 'meet the buyer' events
Implemented	Encourage head contractors to engage early with Aboriginal communities and businesses through open forums, roadshows and social media
Implemented	Agencies to encourage head contractors to engage early with Aboriginal businesses and communities in the project planning stage, to scope availability and capacity of Aboriginal businesses as well as holding 'meet the buyer' sessions when looking for sub-contractors
Implemented	Publish links to known project pipelines such as INSW pipeline for construction projects over \$50m
Implemented	Publish information on the Procurement Board complaints process and details of the NSW Deputy Ombudsman and their role in respect to monitoring the policy

6 2021 Aboriginal Procurement Policy

The most recent version of the Aboriginal Procurement Policy (APP) came into effect on 1 January 2021. It encourages NSW Government agencies and suppliers to create opportunities for Aboriginal businesses and communities via government procurement.

The policy is underpinned by two primary objectives:

1. Supporting employment opportunities for Aboriginal and Torres Strait Islander peoples.
2. Supporting sustainable growth of Aboriginal businesses by driving demand via Government procurement of goods, services, and construction.

The policy supports Aboriginal businesses and employment through multiple measures, including:

- A target that requires NSW Government clusters to direct 1% of the cluster's addressable spend to Aboriginal businesses.
- A target that requires NSW Government clusters to award 3% of total goods and services contracts to Aboriginal businesses.
- A target to support 3,000 FTE opportunities for Aboriginal and Torres Strait Islander peoples through NSW Government procurement activities by the end of 2021.
- Requiring agencies to include minimum requirements for 1.5% Aboriginal participation in all contracts valued at \$7.5 million or above.
- Giving Aboriginal businesses first consideration by government agencies for contract values up to \$250,000.
- Allowing agencies to negotiate directly with an Aboriginal business for all procurements up to \$250,000, even if there is a mandated prequalification scheme or panel in place.
- Requiring agencies to limit the length of tender responses when seeking more than one quote and minimise tender and contract requirements wherever possible.
- Requiring agencies to provide constructive feedback to unsuccessful tenderers on their tender responses, wherever feasible.

7 Support for Aboriginal businesses

There are multiple support services available for Aboriginal businesses. They include:

buy.nsw	The goal of buy.nsw is to be the first single government procurement platform in NSW — making it easy for NSW Government buyers and suppliers to do business, and better serve the citizens of NSW. The digital portal connects businesses with NSW Government buyers and provides a suite of simple online resources to assist small businesses to bid for NSW Government contracts.
Supplier Hub	Part of the buy.nsw platform, Supplier Hub is a place for buyers and suppliers of products and services to connect. The platform makes it easier to register as a supplier to the NSW government and for NSW Government buyers to locate and purchase from SMEs.
Indigenous concierge service	<p>To enable more Aboriginal businesses to gain access to NSW Government procurement opportunities, the NSW Government offers a ‘concierge service’. This service assists Aboriginal businesses through the prequalification scheme registration process.</p> <p>Email sourcing@treasury.nsw.gov.au or call 1800 679 289 (8:30am - 5:00pm, Monday to Friday).</p>
Tendering support program	The NSW Small Business Commission has collaborated with TAFE NSW to launch online training as well as a written guide to help small businesses understand and navigate the tendering and contract processes involved in working with the NSW Government.
Industry Capability Network NSW	<p>The NSW Government jointly funds the Industry Capability Network NSW (ICN NSW). The ICN NSW delivers free of charge procurement advice and business matching to NSW project owners and suppliers on major projects.</p> <p>The NSW Government recognises the importance of bridging the information gap between buyers and sellers, and the ICN NSW provides services that make it easier for NSW small and medium businesses to grow.</p>
Business Connect	<p>Business Connect is a NSW Government funded program, to support small businesses to start, run, adapt or grow. As well as a State-wide network of local advisors, Business Connect also provides specialist procurement advice.</p> <p>Specialist procurement advisors work with small and medium businesses and host events to help build capability and skills, provide advice on tenders and processes, introduce businesses to supplier lists and report back to the NSW Government on their experience.</p>

8 NSW Government Procurement Information

NSW Government Procurement Policy Framework

The NSW Procurement Policy Framework provides a consolidated view of NSW Government procurement objectives and the NSW Procurement Board's requirements as they apply to each step of the procurement process.

The NSW Procurement Policy Framework is a 'policy' for the purposes of s 176(1)(a) of the Public Works and Procurement Act 1912. New South Wales Government agencies, as defined in s 162 of the Act, must comply with the mandatory parts of this document.

Procurement has a broad end-to-end definition from 'needs identification' to 'contracting and placing orders', managing contracts and supplier relationships and disposing of government assets.

The framework applies to the procurement of goods and services, as well as construction, and includes requirements which ensure the NSW Government meets its obligations under international procurement agreements.

Procurement objectives

Value for money

The overarching consideration for government procurement is ensuring best value for money in the procurement of goods, services and construction.

Value for money is not necessarily the lowest price, nor the highest quality good or service. It requires a balanced assessment of a range of financial and nonfinancial factors, including quality, cost, fitness for purpose, capability, capacity, risk, total cost of ownership or other relevant factors.

Fair and open competition

Fair and open competition improves outcomes for NSW by broadening access to government procurement. Transparent, competitive processes build trust in government procurement practices and decisions, drive fair and ethical behaviour, safeguard probity and foster healthy working relationships between government buyers and suppliers. Competition produces tangible outcomes such as cost savings, increased quality and innovation and supports market sustainability.

Easy to do business

New South Wales aims to be the easiest state to start and stay in business. Making NSW Government procurement simpler, easier and more efficient saves time and money for both agencies and businesses. Streamlined and accessible processes lower barriers to participation and expand opportunities to a broad supply base, especially small and medium businesses.

Innovation

The private marketplace is a great source of innovation and can assist government to work smarter and deliver better services. Industry engagement and flexible procurement practices assist agencies to adopt innovative services and solutions and support supplier innovation in government supply chains.

Innovation can be encouraged at three levels of market engagement:

- At the state economic level – through effective, early, structured, and open communication of needs to the market
- At the sourcing level – by adapting sourcing methods to facilitate innovation and collaboration

At the contract management level – by focusing on outcomes and developing supplier relationships that deliver value beyond the contract.

SME and Regional Procurement Policy

Aboriginal businesses may benefit from other NSW Government policies. The NSW Government's Small and Medium Enterprise (SME) and Regional Procurement Policy is part of the broader NSW Government Procurement Policy Framework and is designed to increase the participation of SMEs and regional businesses in NSW Government procurement of goods and services.

The Policy is underpinned by four primary objectives:

1. supporting local businesses, start-ups and innovation, and primary industries
2. building SME capability to supply to government
3. making supplying to government easier for SMEs; and
4. listening to local businesses and measuring participation.

SMEs are supported through a range of initiatives, including:

- making it easier to buy directly from small businesses for values up to \$50,000
- giving regional suppliers and SMEs first consideration by government agencies for values up to \$250,000
- requiring agencies to consider SMEs in all procurements valued above \$3 million through specific evaluation criteria.
- making it easier to engage SMEs for proof-of-concept testing or outcome-based trials valued at up to \$1 million
- requiring agencies to limit the length of tender responses when seeking more than one quote and minimise tender and contract requirements wherever possible
- requiring agencies to provide pre and post tender briefings when reasonably requested to clarify requirements and provide feedback on unsuccessful bids; and
- giving SMEs a voice through a feedback tool.

International procurement agreements

Australia is party to several international trade and procurement agreements which impact NSW Government procurement procedures. NSW Government agencies covered by these agreements must comply with [PBD 2019-05 Enforceable Procurement Provisions](#).

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (TPP-11) and World Trade Organisation Government Procurement Agreement (WTO GPA) set out internationally agreed rules for conducting government procurement. These rules have previously been incorporated into free trade agreements with the United States of America, Chile, Korea, Japan, Singapore and Peru, and currently apply to NSW Government procurement.

The TPP-11 and WTO GPA specifically allow the NSW Government to implement preference arrangements with small and medium sized businesses and Aboriginal businesses.

Agency responsibilities

New South Wales Government procurement operates within a devolved governance structure.

The heads of government agencies are ultimately responsible for managing their agency's procurement in compliance with procurement law and government policy and entering into contracts on behalf of their agency.

9 Definitions

Aboriginal business	<p>An Aboriginal business is one that is considered to be an Aboriginal owned business through recognition by an appropriate organisation, such as:</p> <ul style="list-style-type: none">• NSW Indigenous Chamber of Commerce• Supply Nation• Office of Registrar of Indigenous Corporations.
APIC Policy	<p>APIC refers to the Aboriginal Participation in Construction Policy, which came into effect on 1 May 2015 and was amended on 1 July 2018</p>
APP	<p>APP refers to both versions of the Aboriginal Procurement Policy, the first which came into effect on 1 July 2018 and the latest APP which came into effect on 1 January 2021.</p>
Prequalification schemes	<p>Prequalification schemes are lists of suppliers from which government agencies can seek proposals or quotes.</p>
Regional NSW	<p>Regional NSW includes all areas within NSW outside the Newcastle, Sydney and Wollongong metropolitan areas.</p>
SME	<p>In the SME and Regional Procurement Policy, a SME is an Australian or New Zealand based small or medium enterprise with fewer than 200 full-time equivalent (FTE) employees. Further to this:</p> <ul style="list-style-type: none">• a small business is defined as an enterprise with 1-19 FTEs including sole traders and start-ups• a medium business is defined as an enterprise with 20-199 FTEs.

10 Further information and contacts

For further information or clarification on issues raised in this discussion paper, please contact:

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