



NSW Government Small and Medium Enterprise and Regional Procurement Policy Review Discussion Paper

March 2021

Minister's message

Small businesses are the backbone of the New South Wales (NSW) economy. There are over 800,000 small businesses across NSW who employ around half the State's workforce and inject billions of dollars' worth of sales and service income into our economy each year.

It's more than just numbers however — each and every business plays a critical role in the social fabric of a community, providing everything from sponsorship of local sporting teams to supplying goods and critical services to families in all corners of the State.

2020 was a tough year for businesses and communities across NSW. Bushfires, drought, floods and COVID-19 have meant that small businesses owners have done it tough and shown a level of resilience of which we can all be proud.

The NSW Government has acted rapidly to provide support for businesses and individuals as we have navigated the dual health and economic crises that have rocked the globe. Whether it's payroll tax cuts, direct grants, access to business advice, the Dine and Discover program and more, we want to get the economy firing again — and small businesses will be instrumental to our economic recovery.

One of the ways we can support small businesses is to increase awareness and opportunities to contract with the NSW Government, particularly businesses in Regional NSW.

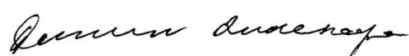
Last financial year, the NSW Government spent \$24 billion on goods and services, giving small and medium and regional businesses supplying to government agencies the opportunity to grow.

In February 2019, the *Small and Medium Enterprise (SME) and Regional Procurement Policy* was released to ensure the NSW Government keeps small and medium businesses and regional suppliers front of mind when making procurement decisions.

For example, the Policy currently provides government agencies with the ability to purchase goods and services directly from any small business up to the value of \$50,000, even where there is a mandatory whole of government contract in place.

This is a great Policy, but we want to do better. This discussion paper seeks feedback to understand how the policy is meeting its objectives and inform recommendations to improve the SME and Regional Procurement Policy. We want to hear from you so get in touch.

As we move into a post-pandemic economy, small businesses will be at the front of our recovery. There is more work to do, but our focus is on ensuring that the NSW Government is doing everything we can to unlock more and more opportunities for small businesses to get ahead in NSW.



The Hon. Damien Tudehope, MLC
Minister for Finance and Small Business

Introduction

This discussion paper invites feedback from small and medium businesses, industry groups and members of the public to help understand how the *Small and Medium Enterprise (SME) and Regional Procurement Policy*, which is designed to increase SME participation in government procurement, has met its objectives.

The NSW Government is committed to working with small and medium businesses to help them continue to grow and create jobs for NSW's communities, regions, and the State's economy. We want to hear from you about the issues that are important to small, medium and regional businesses.

Your views will help us to understand the effectiveness of the policy and develop recommendations on how it can be improved.

Statistics



Most small and medium businesses in Great Sydney Local Government Areas (LGAs) were located in:¹

1. Sydney
2. Canterbury-Bankstown
3. Northern Beaches
4. Parramatta
5. Blacktown

Most small and medium businesses in Regional NSW LGAs were located in:²

1. Central Coast
2. Lake Macquarie
3. Tweed
4. Shoalhaven
5. Mid-Coast

¹ As at 30 June 2020. Australian Bureau of Statistics (ABS), 2021, *Counts of Australian Businesses, including Entries and Exits, July 2016 to June 2020*, (cat. 8165.0). Note: The ABS defines employees based on headcount, not FTE. SME and Regional Procurement Policy refers to FTE.

² As at 20 June 2017, Australian Bureau of Statistics (ABS), 2018, *Counts of Australian Businesses, including Entries and Exits, July 2013 to June 2017*, (cat. 8165.0). Note: Regional NSW is defined as areas outside of the Sydney Greater Metropolitan Region, Newcastle and Wollongong

In the 12 months since the policy commenced on 1 February 2019, NSW Government spend increased (from the previous year) by:³



3.8% or \$337m
with SMEs



19.6% or \$255m
with regional suppliers

The NSW Government engages:³



More than
52,000
SMEs a year



More than
24,000
regional businesses a year

³ NSW Government Procurement Spend Cube.

Support

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.

Tendering support program

As part of the 2020-21 NSW Budget, the NSW Government has committed \$5 million to establish a tendering support program to assist small businesses submit tenders and negotiate NSW Government contracts. The NSW Small Business Commission will deliver the program.

Faster payment terms

The NSW Government recognises that cashflow has always been a major issue for small businesses and is committed to accelerating payment cycles. Payments of up to \$10,000 can now be paid instantly by all NSW Government agencies for small businesses with credit card facilities. From December 2019, all registered small businesses must be paid within five business days for goods and services worth up to \$1 million, through a correctly rendered invoice.

Faster payment pilot to benefit small business subcontractors

The NSW Government is looking at measures to further support small businesses, especially those that have been impacted by drought and floods as well as COVID-19 in 2020-21. These measures will ensure that large businesses, which contract directly with the NSW Government, pay their small business subcontractors engaged on NSW Government contracts within 20 business days of receiving a correctly rendered invoice.

A new pilot program is expected to be complete by June 2021, with a NSW Government wide policy to be implemented following the pilot program.

Aboriginal Procurement Policy and concierge service

The NSW Government's *Aboriginal Procurement Policy* (APP) enables NSW Government agencies to negotiate directly with Aboriginal businesses for contract values of up to \$250,000. The policy aims to award Aboriginal businesses at least three per cent of all NSW Government domestic contracts for goods and services by 2021 and support 3,000 FTE opportunities for Aboriginal people by 2021.

The APP has set a further target for NSW Government clusters to direct 1 percent of addressable spend to Aboriginal businesses.

Additionally, 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. Prequalification schemes are lists of suppliers from which government agencies can seek proposals or quotes.

Industry Capability Network NSW

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.

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.

Business Connect

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.

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.

Further 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.

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 have introduced a new requirement for an independent review body to consider complaints from suppliers. Suppliers (including Australian suppliers) have the right to lodge a complaint alleging that an agency is not complying with PBD 2019-05 Enforceable Procurement Provisions. If not satisfied with the agency response, the supplier can lodge their complaint with the Supreme Court.

The Supreme Court can review a supplier complaint and issue injunctions to an agency and order payment of limited compensation.

Despite misconceptions that local NSW businesses are disadvantaged by these international government procurement agreements, more than 22 percent of Australia's trade is with members of the TPP-11, valued at approximately \$171 billion per year.

The TPP-11 provides NSW export businesses with legally enforceable access to government procurement markets in the member nations.

The WTO GPA provides NSW businesses with legally enforceable access to government procurement markets in 47 nations, valued at approximately \$2.5 trillion each year

Under the TPP-11 and WTO GPA, the NSW Government must provide reciprocal rights for international suppliers to participate in procurement by NSW Government departments and a limited number of other agencies, for specified categories of goods and services, including construction.

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.

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, especially for SMEs and regional businesses. 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.

Economic development, social outcomes and sustainability

Government procurement can help to support economic participation, boost social outcomes, develop skills and create jobs for the citizens of NSW.

By building a diverse supply base, government agencies can support businesses of all types to grow and encourage economic development across the State.

The NSW Government uses procurement to support small and medium sized businesses, Aboriginal-owned businesses, regional businesses, resourcing the disability employment sector and social enterprises.

The NSW Government is also using its substantial infrastructure investments to support jobs and skills development for a range of workers including Aboriginal people, apprentices and young people aged under 25 years.

Sustainable procurement focuses on spending public money efficiently, economically and ethically to deliver value for money on a whole of life basis. Sustainable procurement extends the assessment of value for money beyond the sourcing process, considering benefits and risks to the organisation, the community, the economy and impacts on the environment.

Small and Medium Enterprise (SME) and Regional Procurement Policy

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.

Definitions

A small or medium enterprise (SME) is an Australian or New Zealand based enterprise with fewer than 200 Full Time Equivalent (FTE) employees.

In this policy the terms SME and local business are used interchangeably.

A small business is a business with 1-19 FTEs, including sole traders and startups, and a medium business is a business with 20-199 FTEs.

A regional supplier is a business of any size with a registered business address in regional NSW.

Regional NSW includes all areas within NSW outside the Newcastle, Sydney and Wollongong metropolitan areas.

Discussion questions

1. Are the NSW Government policy initiatives in the SME and Regional Procurement Policy working well? If yes, why? If no, what is not working and how can we increase their effectiveness?
2. How can we make it easier for small and medium enterprises to supply to the NSW Government under the Policy? Are the NSW Government's existing support services and/or tools effective? What can be improved?
3. What are the unique challenges for small and medium businesses supplying to the NSW Government in regional areas? How do these challenges differ to SMEs operating in Sydney, Newcastle and Wollongong metropolitan areas? What other initiatives could the NSW Government consider to address challenges in regional areas?
4. What can be done to give small, medium and regional businesses the best opportunity to successfully participate in large value tenders? What are the key issues and common barriers?

Further information and contacts

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

NSW Procurement, NSW Treasury

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