



NSW GOVERNMENT RESPONSE

Standing Committee on Social Issues' Inquiry into procurement practices of government agencies in New South Wales and its impact on the social development of the people of New South Wales. First Report (21 June 2024)

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INTRODUCTION

The NSW Government acknowledges the themes and issues raised through the Inquiry's First Report which deals with the procurement practices of government agencies in NSW.

The recommendations and responses focus on improving the following outcomes across NSW Government procurement:

- Increase simplicity for suppliers engaging with the NSW Government
- Improved transparency and access to information on procurement contracts
- Uplift capability to improve agency compliance and assurance with procurement policies and directions
- Strengthening the NSW Government procurement framework including value for money and supplier feedback.

Across Government, various initiatives have been implemented or are underway that addresses the Inquiry's findings.

- **Finding 1: There is no consistent or comprehensive definition and understanding of 'value for money' as part of the NSW Procurement Policy Framework to assist government agencies to interpret and apply effectively to government procurement activities.** The NSW Government will strengthen guidance on the definition of value for money and the manner in which these assessments are undertaken to ensure public money is spent responsibly.
- **Finding 2: There are barriers to government procurement opportunities for small-medium enterprises, including inequitable tender and contractual requirements.** The NSW Government is committed to making it easier for small-medium enterprises to participate in government procurement and has started to implement a range of measures to remove barriers and ease tendering and contractual requirements for small-medium enterprises. The NSW Government will explore further opportunities to build on these initiatives.
- **Finding 3: The NSW Procurement Board is not functioning effectively as an oversight body to ensure agency compliance with obligations under the NSW Procurement Policy Framework and the *Public Works and Procurement Act 1912*.** The NSW Government will review the agency accreditation schemes for goods and services and construction procurement; and introduce additional measures to uplift agency compliance with procurement policies and introduce an appropriate consequence management framework.
- **Finding 4: The current approach to government procurement in NSW is not effective in ensuring that government procurement objectives are met, and a new approach is warranted.** The NSW Government is implementing a range of commitments to improve the effectiveness of government procurement including backing small businesses, boosting local procurement and rebuilding domestic manufacturing.

On 1 September and 3 September, the NSW Government announced that it will introduce a series of new measures to enhance the NSW Government's Procurement Framework. This includes:

- Removing the prohibition on local content rules and introduced new [‘if not, why not’ rules for local procurement](#) allowing agencies to consider local content and development opportunities when suppliers bid for government contracts; and undergo a ‘please explain’ process if a local supplier is not awarded a contract;
- Establishing [a Jobs First Commission](#) to oversee the implementation and enforcement of local content measures to help grow domestic industries and jobs for local workers; and
- Enacting a debarment regime [to ban suppliers who engage in serious misconduct or abuse of trust](#) from doing business with the NSW Government.

These reforms are set out in Attachment A.

RESPONSE TO RECOMMENDATIONS

Recommendation 1

That the NSW Government review and implement an expanded definition of 'value for money' as part of the NSW Procurement Policy Framework, as an immediate priority, to assist government agencies to interpret and apply effectively to government procurement activities.

Supported

The NSW Procurement Policy Framework currently includes a broad definition of value money that reflects the contribution that government procurement can make to economic, financial and social policy objectives.

Value for money is defined in the NSW Procurement Policy Framework as not necessarily the lowest price, nor the highest quality good or service. It requires a balanced assessment of a range of financial and non-financial factors that may include quality, cost, fitness for purpose, capability, capacity, risk, total cost of ownership or other relevant factors.

NSW Government will strengthen the existing definition of 'value for money', and how it is applied to ensure public money is spent responsibly. The NSW Government will work with agencies to ensure the definition is applied consistently.

Furthermore, the NSW Government has announced its intention to legislate the establishment of a Jobs First Commission to oversee the implementation of local content measures.

Employment opportunities and the growth of domestic and regional industries will also be considered in the definition of 'value for money'.

Recommendation 2

That the NSW Government:

- review what standard procurement contracts are currently available across all government agencies
- consider developing standard procurement contracts across all government agencies where none exist
- through stakeholder consultation, investigate the value of mandating standard procurement contracts where appropriate.

Supported

The NSW Government will review standard procurement contracts.

In consultation with stakeholders, the NSW Government will identify further opportunities to simplify procurement contracts to drive more robust contract management.

Recommendation 3

That the NSW Government reduce the threshold to \$100,000 at most for disclosing government procurement contracts to ensure greater transparency of government procurement activities.

Supported in principle

The NSW Government acknowledges that reducing the contract disclosure threshold from \$150,000 to \$100,000 will ensure greater transparency.

In this regard, consultation with the NSW Information and Privacy Commission is required on potential legislative amendment and with agencies on the timeframe and processes for implementation.

Recommendation 4

That the NSW Government set contract management standards, including expectations around contract monitoring and storage requirements for contracts of any value.

Supported

Existing NSW legislation and policies specify an agency's obligations in relation to contract management standards and monitoring and storage requirements.

The *State Records Act 1998* outlines what agencies must do in relation to the creation, management and protection of government records. The NSW Procurement Policy Framework further requires that appropriate records relating to procurement planning, management and decision-making be kept.

The NSW Government will modernise its contract management standards, and establish minimum standards that address contract monitoring, retention and storage.

Recommendation 5

That the NSW Government develop measures to ensure feedback is provided to all parties involved in a competitive tender bid, as a standard outcome of the procurement process.

Supported

The NSW Procurement Policy Framework provides that post tender briefings are to be provided to any unsuccessful tenderer when reasonably requested.

Pre- and post-tender briefings must also be provided when reasonably requested by small-medium enterprises and regional suppliers in order to clarify requirements and provide feedback on unsuccessful bids

Government accredited agencies are required to attest to their compliance to the NSW Procurement Policy Framework in their annual accreditation attestation.

The NSW Government will review the existing guidance in the NSW Procurement Policy Framework, and in consultation with stakeholders to determine what further measures are required.

Recommendation 6

That the NSW Government assess its agency accreditation programs, in particular for construction procurement, with a view to implementing robust accreditation levels to better qualify agencies to meet their procurement needs.

Supported

The NSW Government supports a robust accreditation program and will request that the NSW Procurement Board review both the accreditation programs for goods and services and construction procurement.

Recommendation 7

That the NSW Government investigate the barriers to government procurement opportunities for small-medium enterprises, with a view to amending or removing inequitable tender or contractual requirements.

Supported

The NSW Government is committed to making it easier for small-medium enterprises to participate in government procurement. The NSW Government has implemented several measures to remove barriers for small-medium enterprises and commence development on other initiatives.

Most recently, the NSW Government has already delivered on election commitments for small business. The direct small-medium enterprises engagement threshold for goods and services procurement (excluding construction) was increased from \$150,000 to \$250,000.

In addition, insurance and tendering requirements were eased for small-medium enterprises meaning agencies must only request proof of relevant insurance coverage at the time of contract award rather than when submitting a tender.

In conjunction with the implementation of Recommendation 2, we will review contractual requirements for small-medium enterprises.

The NSW Government will, in consultation with relevant stakeholders, continue to identify additional opportunities to remove barriers to participation in government procurement for small-medium enterprises.

Recommendation 8

That the NSW Procurement Board develop an independent and robust compliance and enforcement mechanism, with increased data monitoring capabilities, to meet its obligations under the NSW Procurement Policy Framework and the Public Works and Procurement Act 1912.

Supported

The NSW Government, in consultation with the NSW Procurement Board will develop and introduce new additional measures to uplift agency compliance with the NSW Government Procurement Policy Framework; and aim to introduce an appropriate consequence management regime.

The NSW Government will enhance data monitoring capabilities to ensure public money is being spent responsibly and with integrity.

Recommendation 9

That the New South Wales Government expand the remit for procurement officers to undertake sufficient due diligence functions and monitoring of agency compliance with the NSW Procurement Policy Framework.

Supported

The NSW Government supports uplifting capability of procurement officers across agencies to undertake due diligence functions and monitor agency compliance with procurement policies.

NSW Procurement, part of NSW Treasury delivers whole of sector procurement capability training to all NSW government agencies. This includes foundational training, professional training, facilitating a Community of Practice and providing training tools and systems.

Responsibility for regularly monitoring and reviewing capabilities of their procurement officers on an ongoing basis lies with NSW Procurement Board members who are regularly asked to identify any capability gaps or undertake due diligence and compliance activities within their agencies.

In conjunction with the implementation of Recommendation 8, the NSW Government will, in consultation with key stakeholders, look at how best to communicate any compliance and consequence management regime and provide adequate support and training to agencies.

Courtney Houssos

Minister for Finance

Minister for Domestic Manufacturing and Government Procurement

Minister for Natural Resources

**Media Release****Dodgy suppliers to be banned from NSW Government contracts****Sunday, 1 September 2024**

The Minns Labor Government will introduce legislation to ban suppliers who engage in serious misconduct or abuse of trust from doing business with the NSW Government.

The procurement reforms will establish a debarment regime and define the rules and processes which can be used to stop a supplier from gaining access the state's annual \$42 billion spend.

For the first time, the NSW Government will have the power to exclude suppliers that engage in misconduct. Examples of misconduct could include the company, or one of its directors or senior managers, having engaged in fraudulent or corrupt conduct or failing to comply with taxation laws. Lesser penalties, such as suspension, could apply to suppliers depending on the seriousness of the conduct and any mitigating circumstances.

The regime will ensure that any debarment actions taken also apply to any subsequent 'phoenix' operations.

It means dodgy companies won't get an unfair advantage over companies that act in good faith and meet the ethical standards and behaviours the NSW Government expects from its suppliers.

It will protect taxpayer funding from unscrupulous operators by bolstering integrity and improving transparency.

The debarment scheme is part of a series of reforms to modernise the state's procurement framework undertaken by the Minns Labor Government. This includes measures to enhance the integrity of the procurement framework and restore public trust in public spending.

A debarment regime was raised by the Independent Commission Against Corruption (ICAC) in its April 2024 Operation Hector report.

While a debarment scheme operates in Western Australia and in other international jurisdictions, this is a first for NSW. The NSW Government will undertake extensive consultation with industry and other key stakeholders to develop the regime.

Quotes attributable to the Minister for Domestic Manufacturing and Government Procurement Courtney Houssos:

"It's essential that public money is spent responsibly and with integrity.

"This announcement begins crucial reforms to ban dodgy operators and maintain public trust in the way the NSW Government is spending taxpayers' funds.

"Thousands of hard-working, honest suppliers engage with the NSW Government every year. This regime will make sure we are not engaging with bad apples.

“We were left with a muddled and chaotic procurement system by the previous Liberal-National Government. The Minns Labor Government’s debarment scheme will continue our program of reforms to deliver necessary change.”

Courtney Houssos

Minister for Domestic Manufacturing and Government Procurement

Anoulack Chanthivong

Minister for Industry and Trade

Steve Whan

Minister for Skills, TAFE and Tertiary Education

**Media Release****Supporting local jobs, boosting local businesses with Jobs First Commission and 'If not, why not' government spending rules****Tuesday, 3 September 2024**

The Minns Labor Government will introduce a series of new measures to support NSW jobs and businesses and encourage the development of local industries, removing barriers to local growth.

These policy changes have the backing of workers and industry and will transform the way the government spends its precious procurement dollars on goods and services.

Working in partnership with local industry

Minister for Domestic Manufacturing and Government Procurement Courtney Houssos will on Tuesday instruct the NSW Procurement Board to axe the previous Liberal-National Government's prohibitions on local content rules.

Those rules made it unlawful for NSW government agencies to seek, or even consider, local employment and business growth opportunities at any stage of the procurement process, harming local businesses at a time when they needed access to valuable procurement opportunities.

NSW government agencies can now consider local content and local development opportunities when suppliers bid for government contracts.

'If not, why not' rules for local procurement

To ensure agencies embrace the policy reversal, Minister Houssos has issued a new direction to the NSW Procurement Board called 'If not, why not'.

Under this direction, the NSW Procurement Board will mandate that NSW Government agencies engage with local NSW suppliers before going to tender for projects worth more than \$7.5 million.

The new rules also mandate that if a contract worth more than \$7.5 million is awarded to a supplier outside of NSW, agencies will need to undergo a 'please explain' process prior to the contract being awarded, outlining why a local supplier was not successful.

The definition of a 'local supplier' for the purposes of the 'If not, why not' direction is limited to NSW enterprises.

While upholding Australia's free trade obligations that prevent discriminating against suppliers because of where they're based or owned, this policy will refocus agencies on supporting jobs and local production in NSW.

This will assist with the Minns Labor Government's plans to boost the competitiveness of NSW industries and help rebuild the manufacturing sector decimated by the previous Liberal-National Government.

'Value for money'

Purchasing the cheapest goods and services does not always equate to 'value for money' for the people of NSW.

Under the previous Liberal-National Government, thousands of jobs and billions of dollars of major contracts were sent abroad. What came back were delays, cost blowouts and, ultimately, inferior products.

A more robust approach to 'value for money' considers factors like supporting employment opportunities and developing regional economies. With these changes, the NSW Government is delivering confidence to domestic and international investors and suppliers alike.

Establishing the Jobs First Commission

The Minns Labor Government will also legislate to create the Jobs First Commission to oversee the implementation and enforcement of local content measures. It will help grow domestic industries and jobs for local workers.

This includes enacting key measures including:

- A local content policy which will implement Labor's election commitment to apply a minimum 30% weighting to NSW Government tenders worth more than \$7.5 million that captures local content, job creation, small business and ethical supply chains.
- A Future Skills Guarantee with workforce targets, including that 20% of the trades workforce on NSW Government construction or infrastructure contracts valued above \$7.5 million are apprentices.
- An independent advisory board with representation from across industry, small business, unions, and the public sector to provide ongoing engagement with, and advice on, government procurement policies as well as local development and industry growth strategies.
- Appointing a Job First Commissioner conferred with 'name and shame' and other compliance and enforcement powers. This will ensure all parties, including NSW agencies, adhere to the government's procurement rules and standards, in particular the new tender weightings rules and local content and skills requirements.

The definition of 'local content' under the Jobs First Commission legislation will be any Australia or New Zealand-based enterprise.

In the seven years since implementing its Local Jobs First policy, the Victorian government has supported 40,000 Victorian jobs and demonstrated the potential impact of policies like these.

Last year the NSW Government spent approximately \$42 billion on goods and services.

Together, these initiatives will also direct more work to the more than 100,000 apprentices and trainees currently registered in NSW and encourage even more to pick up a trade.

This announcement complements the Minns Labor Government's ongoing procurement reforms.

The revocation of the previous government's anti-local content provisions will take effect within 45 days, while the 'If not, why not' direction will come into effect on 1 January 2025. Consultation on an exposure draft of legislation to establish the Jobs First Commission is targeted to be released by the end of the year.

Quotes attributable to Minister for Domestic Manufacturing and Government Procurement Courtney Houssos:

“Businesses and workers in NSW have so much to offer – not just to government but to all consumers.

“These changes will support our local industries and give them new opportunities to secure a larger slice of the NSW government’s \$42 billion procurement spend.

“Our announcement today delivers the next step on an important election commitment we made to support local jobs and local businesses.

“The former government’s ideological zealotry harmed local industries, local businesses and local workers.”

Quotes attributable to Minister for Industry and Trade Anoulack Chanthivong:

“NSW has the most innovative and dynamic businesses in the nation. It makes sense for the NSW Government to invest in those companies.

“Our state has all the ingredients to be a manufacturing powerhouse, but we need to pull all of the levers available to realise that ambition. Government procurement is a powerful tool to boost industry growth.

“When boardrooms are making big investment decisions, they need to know that NSW has the skills and capabilities for manufacturing and these changes will send a powerful signal.”

Quotes attributable to Minister for Skills, TAFE and Tertiary Education Steve Whan:

“Alongside our commitment to deliver 1,000 additional apprentices and trainees across NSW Government agencies, this announcement demonstrates our commitment to developing the skilled workforce for the state’s future.

“Local industry and business represent key players in workforce development across the state. Through this initiative we will open up more opportunities for young people to secure highly skilled, well-paid and secure jobs within their local area.”

Quotes attributable to Business NSW CEO Dan Hunter:

“Not only will this decision supercharge our manufacturing base, it will also boost local skills development and drive innovation.

“NSW has the biggest and most sophisticated private enterprise economy in the country, and this decision will go some way to ensuring we remain the best place to start and develop a business.

“NSW’s small and medium businesses have always been happy to compete with the big players when it comes to winning government contracts – they just need a level playing field.”

Quotes attributable to Unions NSW Secretary Mark Morey:

“For too long, we’ve seen valuable contracts and opportunities sent offshore, at the expense of local workers and industries. The new 'Jobs First' approach, with its focus on local content policy and skills, will help ensure NSW public spending directly benefits our communities, workers, and apprentices.

“Unions pushed hard for a Jobs First Commission with oversight and enforcement powers, because it’s vitally important that local industry is supported to create sustainable, skilled jobs for NSW workers. We particularly welcome the targets for apprentices and trainees on major projects, which will help build the skilled workforce of tomorrow.

“This is a profoundly important policy shift which recognises that supporting local jobs and businesses sets us up for the future. This fosters innovation and stronger industrial capability, creating solid opportunities for the next generation of NSW workers.”