

# Aboriginal Procurement Policy

May 2018



# Contents

	Page
<b>1. Policy context</b>	<b>2</b>
1.1. Purpose	2
1.2. Objective	2
1.3. Policy targets	2
<b>2. Applying the APP</b>	<b>3</b>
2.1. Aboriginal owned business	3
2.2. Commencement	3
<b>3. NSW Government agencies</b>	<b>4</b>
3.1. Major procurement actions	4
3.2. Procurement from Aboriginal owned businesses	5
3.2.1. First consideration	5
3.2.2. Direct negotiation	5
3.3. Aboriginal Participation Strategy	6
3.4. Aboriginal participation in contracts	6
3.5. Compliance and reporting by NSW Government agencies	6
<b>4. NSW Government suppliers</b>	<b>7</b>
4.1. Supplier reporting requirements	7
4.2. Incentives and consequences	7
<b>5. Governance</b>	<b>8</b>
5.1. Monitoring and publishing results	8
5.2. Annual review	8
5.3. Evaluation of the APP	8
5.4. Information and guidance	8

# 1. Policy context

## 1.1. Purpose

The NSW Government values the economic, social and cultural contribution offered to NSW from the Aboriginal community.

The Aboriginal Procurement Policy (APP) will contribute to the NSW Government's strategic economic policy of **Growing NSW's First Economy**.

Government procurement provides a significant opportunity to increase Aboriginal skills and economic participation. The APP supports the NSW Government Plan for Aboriginal Affairs, **OCHRE**, and is a key deliverable under the **Aboriginal Economic Development Framework**.

**OCHRE** aims to support strong Aboriginal communities in which Aboriginal people actively influence and fully participate in economic, social and cultural life. It recognises that the NSW Government and the business community have a key role to play in broadening opportunities for Aboriginal people to deliver positive socio-economic outcomes.

The NSW Government's procurement capacity can be leveraged to support Aboriginal employment opportunities and the participation and growth of Aboriginal owned businesses.

The NSW Government will continue to work meaningfully in partnership with businesses to build a sector that is viable, competitive and achieves outcomes for the benefit of the Aboriginal and broader community.

## 1.2. Objective

The APP will create opportunities for Aboriginal owned businesses and encourage Aboriginal employment through the supply chain of NSW Government contracts.

### Key objectives of the APP are to:

- support employment opportunities for Aboriginal people within Aboriginal owned businesses
- support employment opportunities for Aboriginal people within non-Aboriginal owned businesses
- support sustainable growth of Aboriginal owned businesses by driving demand via government procurement of goods and services.

## 1.3. Policy targets

The NSW Government targets for supporting employment opportunities and contracting with Aboriginal owned businesses are set at a whole-of-government level as opposed to an individual agency level.

### Target: Aboriginal participation in NSW Government procurement

In conjunction with the existing Aboriginal Participation in Construction (APIC) policy, the APP will aim to support an estimated **3,000** full time equivalent employment opportunities for Aboriginal people through NSW Government procurement activities by **2021**.

The APP will aim for Aboriginal owned businesses to be awarded at least **three per cent** of the total number of domestic contracts for goods and services issued by NSW Government agencies by **2021**.

The NSW Procurement Board may allocate specific targets to agencies or for different categories of expenditure, where it is considered applicable to help achieve the overall whole-of-government target.

The objectives and targets of the APP include Aboriginal and Torres Strait Islander owned businesses and Aboriginal and Torres Strait Islander peoples.

## 2. Applying the APP

The APP applies to the procurement of goods and services of any kind by all NSW Government agencies, as defined in Part 11 of the *Public Works and Procurement Act 1912*, excluding construction. The APIC policy's Aboriginal participation requirements for NSW Government construction projects continue to apply.

The APP applies to all NSW Government departments, statutory authorities, trusts and other government entities (collectively referred to as 'agencies').

State owned corporations are encouraged to adopt aspects of the APP that are consistent with their corporate intent.

**The APP applies to all NSW Government departments, statutory authorities, trusts and other government entities (collectively referred to as 'agencies').**

---

### 2.1. Aboriginal owned business

An **Aboriginal owned business** is one that is considered to be 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.

The NSW Procurement Board will work with Aboriginal organisations to establish a central register of Aboriginal owned businesses, to be made available for all NSW Government agencies.

### 2.2. Commencement

NSW Government agencies must apply the APP to all relevant procurement activities commencing from **1 July 2018**.

All agencies are encouraged to apply the policy at an earlier date where this is practical.

## 3. NSW Government agencies

### From 1 July 2018 agencies must:

- publish an annual **Aboriginal Participation Strategy** that describes how the agency will meet its obligations under the APP. This should identify and address upcoming procurement opportunities for Aboriginal participation, at a minimum for the procurement of goods and services valued **over \$10 million** (excl. GST)
- engage with suppliers and consider their capacity to meet the obligations under the APP for all relevant procurement activities
- report all contracts valued **over \$50,000** (excl. GST) entered into with an Aboriginal owned business
- ensure all suppliers are made aware of their obligations under the APP at the time of tender or before
- incorporate supplier obligations under the APP into the contract
- apply any further measures approved by the NSW Procurement Board in support of the APP.

## From 1 July 2018

agencies must engage with suppliers and consider their capacity to meet the obligations under the APP for all relevant procurement activities

---

Agencies are authorised to apply additional measures to achieve the APP's objectives, such as:

- **first consideration** to Aboriginal owned businesses on prequalification schemes before proceeding to market for procurements valued **up to \$250,000** (excl. GST), where appropriate. If one or more Aboriginal owned businesses are identified, the agency should engage with those suppliers before proceeding to market
- **direct negotiation** with suitably qualified Aboriginal owned businesses that can demonstrate value for money and delivery of quality goods and services for procurements valued **up to \$250,000** (excl. GST)
- apply an Aboriginal participation non-price evaluation criteria in relevant tenders where opportunities exist.

### 3.1. Major procurement actions

All NSW Government agencies must consider opportunities for Aboriginal participation in all major procurement activities **over \$10 million** (excl. GST) and must document these opportunities in their procurement strategy.

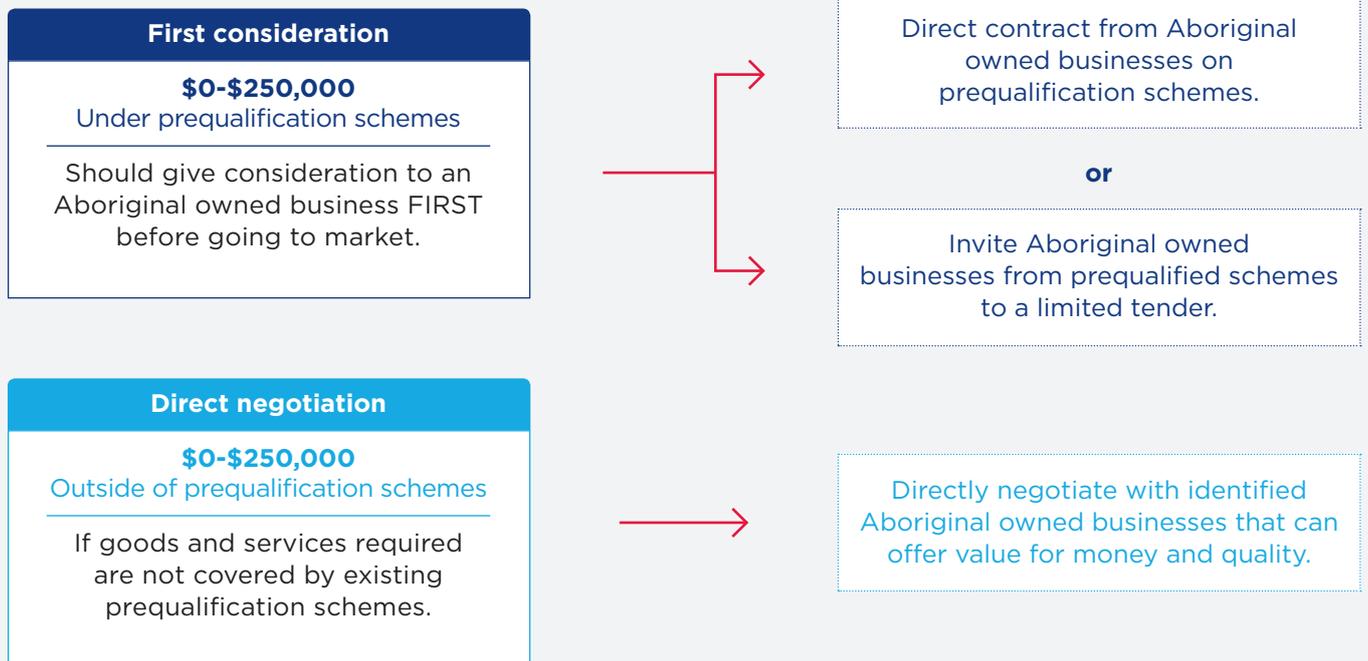
The approach used for Aboriginal participation should be consistent with the agency's **Aboriginal Participation Strategy**, the objectives of the particular procurement activity, and the APP.

Agencies are encouraged to work with suppliers, Aboriginal owned businesses and Aboriginal representative bodies early in the planning stages of procurement activities to identify effective ways of increasing Aboriginal participation in their contracts.

Aboriginal participation requirements for construction projects under the APIC policy continue to apply.

## 3.2. Procurement from Aboriginal owned businesses

In addition to the standard procurement processes, the below sourcing approaches are permitted to be undertaken by agencies when procuring from Aboriginal owned businesses.



### 3.2.1. First consideration

An agency should give first consideration to Aboriginal owned businesses on prequalification schemes before going to market, where appropriate.

An agency may purchase goods and services valued **up to \$250,000** (excl. GST) from an Aboriginal owned business after receiving a single quote provided that value for money and quality of goods and services can be demonstrated.

Alternatively, an agency should invite identified Aboriginal owned businesses to a limited tender.

### 3.2.2. Direct negotiation

If the goods and services are not covered under existing prequalification schemes, an agency is authorised to procure goods or services for values **up to \$250,000** (excl. GST) via direct negotiation provided the Aboriginal owned business meets all the requirements of value for money and quality.

### 3.3. Aboriginal Participation Strategy

Agencies are required to prepare and publish online an **Aboriginal Participation Strategy**. This strategy can be for an individual agency, group of agencies or cluster.

The Aboriginal Participation Strategy must:

- provide a public commitment that the agency will work with Aboriginal owned businesses to grow the First Economy of NSW
- explain how the agency is working with Aboriginal owned businesses to identify and develop business and employment opportunities
- set measurable targets for Aboriginal participation that the agency or cluster will adopt including, where appropriate, targets for specific categories of procurement and Aboriginal workforce strategies
- report the outcomes that have been achieved and actions taken where targets have not been achieved.

An agency must maintain and update this Aboriginal Participation Strategy at least annually, at a time consistent with any requirements for reporting outcomes to the NSW Procurement Board.

### 3.4. Aboriginal participation in contracts

All agencies are expected to include targets for Aboriginal employment in procurement activities, if considered appropriate, and where opportunities exist.

Agencies must include in tenders:

- requirements for suppliers to include an Aboriginal Participation Plan for all contracts **over \$10 million** (excl. GST) in their tender response
- evaluation criteria for Aboriginal participation in tender responses for all contracts **over \$10 million** (excl. GST)
- supplier reporting requirements for Aboriginal participation in the contract.

The NSW Procurement Board may allocate specific Aboriginal participation minimum targets for contracts or identified procurement categories where opportunities exist.

### 3.5. Compliance and reporting by NSW Government agencies

All agencies are required to comply with the APP. Progress of implementation will be monitored to ensure consistent and appropriate application of the APP across NSW Government.

NSW Government agencies must report on implementation and compliance of the APP in their **Aboriginal Participation Strategy** and must provide information to the NSW Procurement Board via mandatory agency and supplier reporting, including:

- contracts valued **over \$50,000** (excl. GST) entered into with an Aboriginal owned business within **45 days** after the contract becomes effective
- Aboriginal employment in Aboriginal owned businesses
- Aboriginal participation and employment in non-Aboriginal owned businesses.

Contracting agencies are responsible for monitoring, administering and holding their suppliers accountable for their **Aboriginal Participation Plans**, progress reports and **Aboriginal Participation Reports**, and submitting them to the NSW Procurement Board once evaluated and approved.

## 4. NSW Government suppliers

The NSW Government values the contribution that the business community is making towards increasing Aboriginal participation in the economy. The government is committed to working with suppliers to create opportunities for Aboriginal owned businesses and to support the employment of Aboriginal people.

All suppliers are encouraged to work with agencies and Aboriginal communities to identify opportunities to increase Aboriginal participation.

Suppliers that submit a proposal and are awarded a contract to supply goods or services to NSW Government will need to meet the requirements for Aboriginal participation under the APP and specified by an agency.

Suppliers submitting proposals for construction contracts will need to comply with requirements in the APIC policy.

### 4.1. Supplier reporting requirements

For all relevant contracts covered by the APP valued **over \$10 million** (excl. GST), suppliers must:

- provide a **draft Aboriginal Participation Plan** as part of the tender response identifying how the supplier will meet the individual contract requirements and targets for Aboriginal participation
- provide a **final Aboriginal Participation Plan** at the commencement of the contract demonstrating how the supplier will meet the individual contract requirements and targets for Aboriginal participation
- provide **progress reports** against the Aboriginal Participation Plan to the contracting agency monthly or more frequently as determined by the contracting agency, in a format specified by the NSW Procurement Board
- provide an **Aboriginal Participation Report** on completion of the contract or on a periodic basis as determined by the contracting agency.

### 4.2. Incentives and consequences

Agencies may introduce incentives to recognise suppliers where they exceed policy targets. Incentives may include repeat contracts, supplier recognition and/or financial rewards.

Consequences may also be applied to suppliers that do not meet specified requirements to drive greater compliance. Consequences may include breach of contract, key performance indicators (KPIs) and service levels, and/or withholding payment.

# 5. Governance

A key feature of the APP is improvement in data collection and reporting of Aboriginal participation in NSW Government contracts and NSW Government suppliers.

The NSW Procurement Board will work with agencies to optimise the capacity of existing systems and leverage current digital platforms, such as eTendering, eQuotes, and prequalification schemes for reporting contracts with recognised Aboriginal owned businesses. Improved data and industry intelligence will help agencies identify opportunities for Aboriginal participation, and inform the APP's future targets and direction. The NSW Procurement Board will work with agencies to monitor progress towards the APP's targets.

## 5.1. Monitoring and publishing results

Under the authority of the NSW Procurement Board, NSW Department of Finance, Services and Innovation is responsible for the administration, monitoring and reporting of this policy. This includes:

- establishing a whole-of-government dashboard to monitor the outcomes of the APP, including:
  - percentage of government contracts awarded to Aboriginal owned businesses
  - contractual spend awarded to Aboriginal owned businesses
  - number of Aboriginal people employed on contracts awarded (direct employment and employment through subcontractors) by NSW Government suppliers.
- publishing an annual review of the APP
- annually reviewing the APP's targets and relevant application to categories/projects/procurement value
- managing complaints about the application of the APP via established complaints handling procedures.

## 5.2. Annual review

The NSW Procurement Board will undertake an annual review of progress against the targets in the APP, in consultation with Aboriginal Affairs NSW, NSW Government agencies and industry.

## 5.3. Evaluation of the APP

The outcomes of the APP will be reviewed in accordance with the **NSW Government Program Evaluation Guidelines**. This outcome review will be undertaken in **2022**, 12 months after the NSW Government target is due to have been achieved.

The APP is covered under the **OCHRE Plan**.

The Deputy Ombudsman (Aboriginal programs) has a legislated function to independently monitor and assess the implementation of prescribed Aboriginal programs starting with OCHRE – the NSW Government's Aboriginal affairs plan. This function is an integral part of the overall accountability framework for OCHRE.

## 5.4. Information and guidance

APP information and guidance for agencies and suppliers is available on the **ProcurePoint** website.

## Contact details

NSW Procurement  
Department of Finance, Services and Innovation

 1800 679 289

 [nswbuy@finance.nsw.gov.au](mailto:nswbuy@finance.nsw.gov.au)