## Government procurement in NSW

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1. INTRODUCTION

The O’Farrell Government has introduced a number of legislative and policy reforms to government procurement in NSW. According to the NSW Government, the new policy framework:

- allows for contemporary means of sourcing government goods and services;
- brings the form and content of government contracts in line with modern practice;
- expands the ways that small and medium enterprises can effectively gain opportunities to supply goods and services to the government; and
- introduces greater innovation into government procurement to stimulate a more vibrant New South Wales economy.

While the reform process is ongoing, key changes have already been implemented. This backgrounder sets out the regulatory framework for government procurement and lists key sources including NSW and Commonwealth government policies, parliamentary committee reports, and journal articles. A timeline identifies key policy developments, together with reports that have informed the reform process. For copyright reasons, links to journal articles and media are only available through the Parliament’s Intranet. Note that this Issues Backgrounder does not cover local government procurement or procurement in the private sector.

2. REFORM TIMELINE

<table>
<thead>
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<td>July 2010</td>
<td>Corruption Risks in NSW Public Sector Procurement: Consultation Paper [link] Independent Commission Against Corruption</td>
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<td>Corruption Risks in NSW Public Sector Procurement: Recommendations to Government [link] Independent Commission Against Corruption</td>
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<td>Corruption Risks in NSW Public Sector Procurement: Suppliers’ Perceptions of Corruption [link] Independent Commission Against Corruption</td>
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### 3. NSW

**LEGISLATION**

On 24 February 2014, the *Government Sector Employment Act 2013* repealed the *Public Sector Employment and Management Act 2002*:

- Chapter 7 and Schedule 2C of the *Public Sector Employment and Management Act 2002*, which deal with the procurement of goods and
services, were transferred with minor amendments to Part 11 and Schedule 5 respectively of the Public Works Act 1912, now titled the Public Works and Procurement Act 1912;

- The Government Sector Employment Act 2013 also repealed the Public Sector Employment and Management Regulation 2009. The Regulation was replaced by the Public Works and Procurement Regulation 2014.

With only minor amendments being made to the procurement related provisions in the Public Sector Employment and Management Act 2002, the Second Reading debates on the Government Sector Employment Act 2013 made no reference to the procurement issue.

In 2012, Chapter 7 of the Public Sector Employment and Management Act 2002 (now Part 11 of the Public Works and Procurement Act 1912) was amended by the Public Sector Employment and Management Amendment (Procurement of Goods and Services) Act 2012. The amending Act also inserted Schedule 2C into the original Act. The amendments replaced the State Contracts Control Board with the NSW Procurement Board. They also transferred the provisions dealing with competitive neutrality in the tendering process to the Public Sector Employment and Management Regulation 2009. Further information on the amending Act may be found here:

- The First Print of the Public Sector Employment and Management Amendment (Procurement of Goods and Services) Bill 2012, with Explanatory Notes
- The Second Reading speech
- Parliamentary debates in the Legislative Council
- In Committee, the Opposition moved four amendments, none of which carried. The Greens moved two amendments, none of which carried.
- Parliamentary debates in the Legislative Assembly
- The Public Sector Employment and Management Amendment (Procurement of Goods and Services) Bill 2012 as passed by both Houses

PARLIAMENT

Committees

Examination of the Auditor-General’s Performance Audits April 2011 – September 2011
Legislative Assembly Public Accounts Committee
May 2013

Procurement and Management of ICT Services in the NSW Public Sector
Legislative Assembly Public Accounts Committee
March 2013
Government procurement in NSW

Rail infrastructure project costing in New South Wales
Legislative Council General Purpose Standing Committee No. 3
March 2012

Report on Environmentally Sustainable Procurement
Legislative Assembly Public Accounts Committee
March 2010

NSW Parliamentary Research Service

Unsolicited proposals (2013)

Public Private Partnerships in NSW: a timeline and key sources (2011)

NSW PROCUREMENT BOARD AND THE DEPARTMENT OF FINANCE & SERVICES

Policies

Goods and Services Procurement Policy Framework
NSW Procurement Board
July 2013

Statement on Value for Money
NSW Procurement Board
July 2013

Prospectus of Savings Opportunities in 2013: NSW Government Contracts
NSW Procurement Board
February 2013

NSW Government Procurement: Small and Medium Enterprises Policy Framework
NSW Department of Finance & Services
January 2013

NSW Procurement Reform: Strategic Directions Statement
NSW Procurement Board
November 2012

NSW Government Procurement Guidelines: Tendering Guidelines
NSW Government
December 2011

NSW Government Procurement Guidelines: Procurement Planning
NSW Government
December 2006

NSW Government Code of Practice for Procurement
NSW Government
January 2005
NSW Procurement Board Directions

The NSW Procurement Board has the power to issue directions to agencies that set rules and guidelines around the procurement of goods and services by agencies.

- Publishing procurement plans on the eTendering website (2013-06)
- Engagement of probity advisers and probity auditors (2013-05)
- Scope for government agencies to support Aboriginal businesses (2013-04)
- Approved procurement arrangements from 1 July 2013 (2013-03)
- Statement on the Promotion of Competition (2013-02)
- Compliance (2013-01)

- Multi-agency access arrangements (authorising of prequalification and registration schemes, standing offers, and panel contracts) (2012-07)
- Use of Procure IT when entering into an arrangement with a supplier for the procurement of ICT goods and services (2012-05)
- Obligation by government agencies to use whole-of-government contracts (2012-02)
- Procurement of goods and services on behalf of other government agencies (2012-01)

Board Directions related to construction procurement:

- Project Bank Accounts (2013-02)
- Financial Assessments (2013-01)

Programs

The NSW Government administers two procurement accreditation schemes: the Agency Accreditation Scheme for Goods and Services Procurement; and the Agency Accreditation Scheme for Construction. Under these Schemes, NSW Government agencies are able to undertake different levels of procurement based on assessed capability.

The NSW Government Gateway Review System helps agencies improve their procurement discipline and achieve better service results from their activity. Reviews are conducted by experienced procurement practitioners who are not involved in the project.

Prequalification Schemes identify suppliers who have been pre-approved to work for the NSW Government. There are currently ten Prequalification Schemes:

- Three construction Prequalification Schemes:
  - Prequalification Scheme for Contractors and Best Practice Accreditation Scheme;
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- Prequalification Scheme for Consultants in Construction;
- National prequalification system for non-residential building;

- Contingent Workforce;
- Executive Search;
- Financial Assessment Services;
- ICT Services;
- ITS 2573: Operational Telecommunications Equipment, Infrastructure and Services;
- Motor Vehicles; and
- Performance and Management Services.

TREASURY

Policy & Guidelines Papers

Total Asset Management (TAM) Submission Requirements
Policy & Guidelines Paper tpp13-03
October 2013

NSW Government Procurement Policy
Policy & Guidelines Paper tpp04-01
July 2004

Guidelines for Assessment of Projects of State Significance
Policy & Guidelines Paper tpp02-4
July 2002

Treasury Circulars

Total Asset Management (TAM) Submission Requirements, TC 13/08, Oct 2013

Submission of Business Cases, TC 12/19, Oct 2012

Annual Reporting on Payment of Accounts, TC 11/21, Dec 2011

Implementation of Penalty Interest on Late Payment Accounts, TC 11/20, Dec 2011

Use of Purchasing Cards and Electronic Payment Methods, TC 11/15, Dec 2011

Payment of Accounts, TC 11/12, July 2011

Gateway Review System, TC 10/13, Nov 2010

DEPARTMENT OF PREMIER AND CABINET

Circulars

Prequalification Scheme: Audit and Risk Committees, C2009-13, May 2009
The Roads And Traffic Authority (RTA) as a Contractor to Agencies, C2008-40, Oct 2008

Prequalification Scheme: Performance and Management Services, C2008-34, Sept 2008


Department of Commerce as a Contractor to Agencies, C2006-55, Dec 2006

Motor Vehicle Policy – Requirements for CEOs, C2004-19, July 2004


Guidelines

Guidelines for the Engagement and Use of Consultants, July 2004

Memoranda

Implementation guidelines for procurement of publicly funded construction services, M2013-04, May 2013

Government Advertising Reform, M2012-12, Oct 2012

Open Government, M2012-10, Aug 2012

Use of Biofuels, M2012-08, 2012


Exemption from Procurement Policy for Disability Organisations, M2010-06, June 2010


NSW Procurement Reforms, M2006-11, July 2006


Government Waste Reduction and Purchasing Policy, M2003-05, May 2003

Engagement and Use of Consultants, M2002-07, June 2002

Australian and New Zealand Government Procurement Agreement, M1998-07, Apr 1998
INDEPENDENT COMMISSION AGAINST CORRUPTION

Managing IT Contractors, Improving IT Outcomes
August 2013

Corruption Risks in NSW Public Sector Procurement: The Management Challenge
July 2011

Corruption Risks in NSW Public Sector Procurement: Recommendations to Government
July 2011

Corruption Risks in NSW Public Sector Procurement: Suppliers’ Perceptions of Corruption
July 2011

Corruption Risks in NSW Public Sector Procurement: Consultation Paper
July 2010

Profiling the NSW Public Sector II – Report 3: Differences Between Local and State Government
April 2010

Profiling the NSW Public Sector II – Report 2: Comparison of 2001 and 2007 Organisation Responses
May 2009

Profiling the NSW Public Sector II – Report 1: Results for the NSW Public Sector as a Whole
May 2009

Further ICAC information on procurement, including relevant ICAC investigations, can be found here.

Further ICAC information on conflicts of interest, including relevant ICAC investigations, can be found here.

NSW AUDITOR GENERAL

Performance Audit – Government Advertising 2012-13
September 2013

Performance Audit – Managing IT Services Contracts
February 2012

Performance Audit – Prequalification Scheme: Performance and Management Services
September 2011

Performance Audit – Government Expenditure and Transport Planning in Relation to Implementing Barangaroo
June 2011
February 2011

Performance Audit – Helicopter Emergency Medical Service Contract
September 2010

Performance Audit – Government Advertising
December 2009

INFORMATION & COMMUNICATIONS TECHNOLOGY (ICT)

NSW Government ICT Strategy: Implementation Update 2013-14
NSW Government
Sept 2013

NSW Government ICT Strategy 2012
NSW Government
May 2012

Information and Communications Technology (ICT) Capital Investment Process
NSW Treasury, Office of Financial Management, Policy & Guidelines Paper
November 2006

PUBLIC PRIVATE PARTNERSHIPS

NSW Public Private Partnerships Guidelines
NSW Government
August 2012

Unsolicited Proposals: Guide for Submission and Assessment
NSW Government
January 2012; Updated August 2012

Accounting for Privately Financed Projects
NSW Treasury, Office of Financial Management, Policy & Guidelines Paper
June 2006

MEDIA RELEASES

Gladys Berejiklian, Tender out to deliver and operate Sydney’s Light Rail Network, Media Release, 7 March 2014

Andrew Stoner and Katrina Hodgkinson, $560,000 water treatment plant for Grabine State Park, Media Release, 5 March 2014

Gladys Berejiklian, More parking spaces for Rockdale customers, Media Release, 13 February 2014

Jillian Skinner, Milestone reached in $80 million Kempsey Hospital redevelopment, Media Release, 4 February 2014
4. COMMONWEALTH

AUSTRALIAN NATIONAL AUDIT OFFICE

Developing and Managing Contracts
Australian National Audit Office, Better Practice Guide
February 2012

Better Practice Guide on the Strategic and Operational Management of Assets by Public Sector Entities
Australian National Audit Office, Better Practice Guide
September 2010

Planning and Approving Projects
Australian National Audit Office, Better Practice Guide
June 2010

Fairness and Transparency in Purchasing Decisions
Australian National Audit Office, Better Practice Guide
August 2007

DEPARTMENT OF FINANCE

Commonwealth Procurement Rules
Department of Finance and Deregulation
July 2012

Guidance material
Department of Finance

Finance Circulars - Procurement
Department of Finance

INFRASTRUCTURE AUSTRALIA

Infrastructure Procurement and Delivery

A Review of Project Governance Effectiveness in Australia
Caravel Group
March 2013

Efficiencies in Major Project Procurement: Volume 2: Consultation Outcomes Report
Infrastructure Australia
June 2012

Efficiencies in Major Project Procurement: Volume 1: Benchmarks for Efficient Procurement of Major Infrastructure
Infrastructure Australia
June 2012
PPP Procurement: Review of Barriers to Competition and Efficiency in the Procurement of PPP Projects
KPMG
May 2010

National Public Private Partnership Policy and Guidelines

National Public Private Partnership Guidelines: Roadmap for applying the Commercial Principles
Infrastructure Australia
February 2011

National Public Private Partnership Policy Framework
Infrastructure Australia
December 2008

National Public Private Partnership Guidelines: Overview
Infrastructure Australia
December 2008

National Public Private Partnership Guidelines: Volumes 1 to 7
Infrastructure Australia
December 2008

5. INTERNATIONAL AGREEMENTS

FREE TRADE AGREEMENTS

The NSW Procurement Board observes the following with regard to Free Trade Agreements:

New South Wales participates in the procurement chapters of a number of Free Trade Agreements (FTA), for example Australia - United States FTA, which establish non-discriminatory procurement arrangements between participating parties. The Agreements apply to nominated NSW agencies and to procurements above stated values for construction and for goods and services. Certain goods and services are exempt (including health and welfare services, education services and motor vehicles). For procurements covered under the Agreements, participating governments must treat suppliers of the other Party, and the goods and services of the other Party, the same as domestic suppliers and domestic goods and services. The Agreements are available at www.dfat.gov.au.

AUSTRALIA AND NEW ZEALAND GOVERNMENT PROCUREMENT AGREEMENT

The NSW Procurement Board explains the relevance of the Australia and New Zealand Government Procurement Agreement to NSW Government procurement as follows:

New South Wales is party to the Australia and New Zealand Government Procurement Agreement (ANZGPA) which promotes opportunities for Australian and
Government procurement in NSW

New Zealand service providers to compete for government business on the basis of value for money in a single competitive market. Further information on the ANZGPA is available at www.apcc.gov.au.

The ANZGPA is applied to NSW Government agencies via the Ministerial Memorandum M1998-07 Australian and New Zealand Government Procurement Agreement. The Memorandum states:

The overriding aim of the ANZGPA is to promote opportunities for Australian and New Zealand suppliers to compete for government business on the basis of value for money in a single competitive market through closer co-operation of the jurisdictions (the Parties to the Agreement) in the development of procurement policy. This aim will be achieved through providing a mechanism for co-operation by the Parties to work together to achieve the greatest possible consistency in contractual, technical, and performance standards and specifications, and simplicity and consistency in the application of procurement policies, practices and procedures.

Whilst the Agreement provides for certain government business enterprises (e.g. state owned corporations) to be excluded from the application of the provisions of the Agreement, each jurisdiction is required to apply its best endeavours to encourage a wider application of the Agreement, consistent with good commercial practice.

I therefore require all NSW Government agencies (except State Owned Corporations) to implement the principles of the Agreement. In relation to State Owned Corporations, I would urge shareholding Ministers and Boards of State Owned Corporations to give consideration to the principles of the Agreement and the possibility of incorporating them into their statements of corporate intent.

6. MEDIA

Tainted security firm awarded police contract, 9 March 2014, SMH

Electronic procurement systems can help councils cut tender costs, 11 February 2014, SMH

Indigenous firms to flourish with BCA help, 10 February 2014, The Australian

Maitland’s private fears – Hospital may follow Sydney model, 13 Jan 2014, Newcastle Herald

Additional media articles on procurement can be found here

7. JOURNAL ARTICLES

Public Policy and Financial Management Through e-Procurement: A practice oriented normative model for maximizing transformative impacts
Alexandru V Roman; Journal of Public Procurement
Fall 2013
An Exploratory Study on the Mature Level Evaluation of e-Procurement Systems  
Mi Jung Lee; Journal of Public Procurement  
Fall 2010

Comparative Performance of PPPs and Traditional Procurement in Australia  
Peter Raisbeck, Colin Duffield and Ming Xu; Construction Management and Economics  
April 2010

Additional articles on procurement can be found here.

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For further information please contact the Research Service on 9230 2356