Local market testing

# Guidance on increasing opportunities for local suppliers to supply to government

30 September 2024

Learn about the guidelines for NSW Government agencies on engaging local suppliers in procurement processes and the requirements for local market testing

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## What you need to know

* Local NSW-based suppliers must have full and fair opportunity to participate in procurement processes
* Agencies must take steps to identify capable local suppliers during the planning stage for all procurements valued $7.5 million or more
* If a local supplier is not awarded the contract, agencies must document the reasons why
* Starting 1 January 2025, agencies must collect and report quarterly data about the use of local suppliers in procurements valued $7.5 million or more
* Agencies must update their procurement frameworks to implement the PBD 2024-02 by 15 December 2024
* All NSW Government agencies must implement the board direction promptly, but no later than 1 January 2025.

## Procurement Board Direction 2024-02

PBD 2024-02 Increasing opportunities for local suppliers to supply to government was released by the Procurement Board on 9 September 2024.

The direction requires agencies, for projects and contracts valued $7.5 million or more, to:

* conduct local market testing during procurement planning to identify NSW-based (local) suppliers
* ensure local suppliers have full and fair opportunity to participate in procurement processes
* state, on an ‘if not, why not’ basis, why a contract has not been awarded to a local supplier if one is available
* report on the implementation of the direction.

## Understanding applicable procurements

The direction applies to:

* NSW Government procurement for a project or contract with a budget of $7.5 million or more
* all categories of procurement for goods and services, including construction and ICT
* all procurement arrangements, from standalone contracts to whole-of-government contracts. This includes procurements using existing prequalification schemes, and the renewal or establishment of procurement panels
* all procurement processes, including procurements using schemes or panels, and direct negotiations.

The direction was issued on 9 September 2024.

In acknowledgement that agency policies, templates and systems may need to be updated before the direction can be implemented for all procurements valued $7.5 million or more, the Minister has set a cut-off date of 1 January 2025 for agencies to ensure the direction is implemented.

However, agencies must implement the direction promptly, but no later than 1 January 2025.

The direction does not apply to procurements that commenced prior to 9 September 2024.

Agencies are to take reasonable steps to apply the direction to any procurements that have commenced, where feasible.

## Updating procurement frameworks.

By 15 December 2024, agencies must update their procurement frameworks, including relevant policies, procedures, standards and guidance material, to implement the board direction.

## Engaging local suppliers and recording ‘if not, why not’ reasoning

Promptly, but no later than 1 January 2025, agencies must:

* adjust procurement processes to require that agency buyers identify capable NSW-based suppliers during the planning stage of all procurements valued $7.5 million or more
* ensure any NSW-based suppliers identified during the planning stage are given full and fair opportunity to participate in the procurement, and
* state, on an ‘if-not, why not’ basis, why a NSW-based supplier was not awarded the contract, if one is available.

## Collecting and reporting data on procurement from local suppliers

By no later than 1 January 2025, agencies are to collect the following information on procurements valued $7.5 million or more:

* procurement category
* whether a capable local supplier or suppliers was identified during the planning stage
* whether the procurement was awarded to a NSW-based (local) supplier, other Australian or New Zealand based supplier, or other international supplier
* the key reasons that each supplier type was not awarded the contract, aligned to value for money criteria.

Government agencies must provide quarterly reports to the Procurement Board, commencing from 1 January 2025. The first quarterly report will cover the period 1 January – 31 March 2025. Treasury will coordinate whole-of-government reporting at the end of each quarter, and report on implementation to the Procurement Board.

Treasury will consult with agencies and issue further guidance on the reporting processes, including the method and date for submitting reports.

Treasury is also investigating how existing data sources, such as contract disclosure data on eTendering and the Supplier Reporting Portal on buy.nsw, may be leveraged to streamline the reporting process.

## Embedding local market testing in procurement plans

### Starting local market testing

Local market testing involves taking reasonable steps to identify if any local supplier or suppliers with the required capacity and capability can supply the goods or provide the services required by your agency.

The local market testing process should be proportionate to the scope and value of the procurement.

Reasonable steps could mean conducting desktop research, undertaking further market research, engaging with industry bodies or other activities up to issuing a request for information or seeking expressions of interest from the market.

1. Search for local suppliers. This can be done through several sources, including:
* [Supplier hub](https://buy.nsw.gov.au/suppliers), which can be used to achieve multiple policy priorities as suppliers such as small and medium enterprises, Aboriginal businesses, social enterprises, and verified gender-equitable suppliers are tagged in the system.[[1]](#footnote-2) Supplier hub also provides supplier location information.

Identifying local suppliers on whole-of-government arrangements, such as panels and prequalification schemes. NOTE: where a whole-of-government arrangement is mandatory, it is sufficient to review suppliers on the scheme or panel to identify local suppliers. If the scheme or panel is not mandated, agencies should use multiple sources to identify local suppliers if there are no local suppliers on the scheme or panel.

* Desktop research, such as an online search and referring to industry-based registers or representative organisations
* Professional and industry networks, e.g. suppliers used by other agencies for similar projects
* Engaging with business support and industry bodies, e.g. [Industry Capability Network](https://www.icn.org.au/icn_nsw/) or [Yarpa Hub](https://yarpa.com.au/)
* Arranging supplier demonstrations or briefings for agency buyers
* Issuing a request for information (RFI) to the market.
* Issuing an expression of interest (EOI) as part of a multi-stage procurement process.
* Issuing an open tender that is advertised publicly via the eTendering website and is open to any interested supplier. Agencies should ensure there that local suppliers are not disadvantaged by the procurement specifications or conditions for participation.

Agencies are encouraged to use multiple methods if no local suppliers are found when using a particular approach.

1. Verify supplier details and confirm the supplier(s) is ‘NSW-based’ on the [Australian Business Register](https://abr.business.gov.au/) and confirm:
* the supplier’s ABN is active
* the supplier’s registered ‘main business location’ is identified as NSW and has a NSW postcode.

Agencies must complete this step to ensure suppliers meet the definition of a local supplier under the direction.

Treasury will consult with agencies and validate this method for verifying that a local supplier is NSW-based prior by the end of 2024.

(NB the Australian Business Registrar requires the main business location to be a physical address. Suppliers provide separate details, such as an accountant’s address, to receive notices or correspondence from the Registrar. There are penalties for entering misleading or inaccurate data on the Register.)

### Determining if a local supplier has the required capability and capacity

The objective of the direction is to ensure local suppliers that can fulfil the needs of the procurement are provided full and fair opportunity to participate in government procurement processes.

Although Local Market Testing is not an evaluation process, it may be helpful to consider possible tender evaluation criteria as they apply to the specific procurement, such as any licensing or qualification requirements, compliance with relevant standards, or work, health and safety requirements. Some of this information may be available from public sources such as through licensing bodies or the supplier’s website.

Agencies should use their judgement and determine the appropriate approach to determining capability and capacity, and the level of detail required, depending on the scope and value of the procurement.

Where feasible, agencies can invite local suppliers to participate during the approach to market (e.g. Request for Quotation (RFQ) or Request for Tender (RFT)) and establish capability and capacity via the formal evaluation.

### Examples of reasonable efforts

1. Where an agency is conducting a procurement for professional services (excluding consultancies) with an estimated budget of $8 million, reasonable and proportionate actions might include desktop research and consulting with networks and industry.
2. Where an agency is procuring for construction services with an estimated value of $55 million, it may be reasonable to issue a request for information (RFI) or an expression of interest (EOI). In this instance, such action may be in accordance with the agency’s procurement rules, as the procurement is greater than $50 million, but also, the complex and bespoke nature of the requirements necessitate understanding market interest in tendering.

### Recording steps taken to identify local suppliers

Agencies need to record in procurement plans the steps that have been, or are intended to be, taken to identify local suppliers.

This information should include a summary of steps taken to identify local suppliers, how capability and capacity were determined and if no local suppliers were found.

Where local market testing will be undertaken through an Rfx or EOI, agencies should record their intention to conduct local market testing in the sourcing stage and identify the proposed process in the procurement plan (such as the strategy, business case or other planning document).

## Recording reasons for not selecting a local supplier during the decision-making process

If one or more local suppliers is identified through Local Market Testing, and the tender has been awarded to a non-local supplier, you must record the reasons why a local supplier has not been selected. This is the ‘if not, why not’ part of the direction.

### Decision making documents

You must record the reasons why a local supplier has not been selected in decision-making documents. These are government records used at every stage of the procurement to document your decisions and the reasons behind them.

Agencies will need to determine the specific form of document used and can be informed by existing procurement processes and governance. Good records are part of meeting the policy and legal obligations of every procurement.

### Referencing value for money criteria

The reasons why a local supplier is not awarded a contract, if there is one available, should align to value for money criteria. Value for money remains the overarching consideration in NSW Government procurement activities.

Guidance and reporting templates that contain standard criteria will be developed in consultation with agencies and published prior to the first reporting period.

## Interactions with PBD 2019-05 Procurement (Enforceable Procurement Provisions) Direction

The purpose of the direction is to:

* ensure local suppliers are provided a full and fair opportunity to compete for government contracts
* better inform the State about the NSW procurement landscape.

The direction does not require a particular outcome when agencies are selecting suppliers.

Agencies can apply the direction to applicable procurements while continuing to comply with requirements for approaching the market in PBD 2019-05 and ensuring that local suppliers are not disadvantaged by the procurement specifications or conditions for participation.

## Definitions

### Local supplier

A local supplier is defined as having:

* an active ABN
* a main business location as displayed on the ABN lookup with a NSW postcode on the Australian Business Register.

These conditions can be confirmed using the Australian Business Register’s [ABN Lookup website](https://abr.business.gov.au/).

Treasury will consult with agencies on a final definition for a NSW-based supplier. The definition will be confirmed with the Minister for Domestic Manufacturing and Government Procurement and communicated in November 2024.

### Determining the commencement date of procurement

The direction provides information on how to determine whether a procurement has commenced in the ‘Transitional Arrangements’ section. A procurement has commenced if and when:

1. the business case which contains a strategy for approaching the market for the procurement is:
* submitted for review by another government entity as part of a mandatory process (e.g. an investor assurance (Gateway) process or to Treasury as part of a funding proposal
* if the above is not applicable, approved by the government agency
1. if 1. is not applicable, the strategy for approaching the market for the procurement is approved by the government agency
2. if neither 1. or 2. is applicable, a request for submissions (Rfx) is released by the government agency.

### Calculating procurement value

The value of a procurement is its estimated budget.

For procurement panels including standing offers (i.e. a procurement panel with one supplier), the value of the procurement is the estimated value of all contracts that may be entered into over the life of the panel, including extension options.

Past agency or whole-of-government spend on the goods or services covered by the panel, sourced from supplier reports (if you are renewing the panel) or spend cube, is often used to estimate the value of a new or renewed panel or standing offer.

The estimated budget includes all costs over the duration of the project or contract consistent with clause 7 of [Procurement Board Direction PBD 2019-05](https://www.info.buy.nsw.gov.au/policy-library/procurement-board-directions/pbd-2019-05-enforceable-procurement-provisions#:~:text=This%20Direction%20sets%20out%20requirements%20relating%20to%20international%20procurement%20agreements) which provides:

1. The estimated value of a procurement is an estimate of the maximum value (excluding GST) of the proposed procurement contract made by the government agency concerned, and is to include the value of the following:
* the goods or services to be procured
* all forms of remuneration payable by the government agency, including any premiums, fees, commissions, interest and other revenue streams that may be provided for in the proposed contract
* any options, extensions, renewals or other mechanisms that may be executed over the life of the contract.
1. If a procurement is to be conducted in multiple parts with a number of proposed procurement contracts awarded either at the same time or over a period of time, with one or more suppliers, the estimated value of the procurement must include the estimated value of all of the proposed procurement contracts.
2. A procurement must not be divided into separate parts if a purpose of the division is to avoid a relevant procurement threshold.
3. If the maximum value of a proposed procurement cannot be estimated, the procurement is taken to have an estimated value that exceeds the relevant procurement threshold for the procurement.

## Implementation timing

NSW Government agencies must implement the direction to applicable procurements promptly, but no later than 1 January 2025.

For more information, contact the NSW Procurement Service Centre on 1800 679 289 or nsw.buy@treasury.nsw.gov.au.

1. Verification bodies include Supply Nation, NSW Indigenous Chamber of Commerce, Office of the Registrar of Indigenous Corporations, Social Traders and WGEA. [↑](#footnote-ref-2)