

GOODS AND SERVICES PROCUREMENT POLICY MANUAL

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| Version Number | 1.0 |
| Release Date | May 2013 |
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GENERAL POLICY REQUIREMENTS

1. INTRODUCTION

CONTEXT:

The NSW Procurement Board (termed “the Board” throughout this document) is responsible for overseeing the procurement and disposal of goods and services by the NSW public sector service (Public Sector Employment and Management Act 2002 and Regulation 2009, refer). The Board has directed agencies to undertake their own procurement of goods and services subject to the following conditions:

- Use Whole of Government contracts wherever applicable;
- Comply with NSW procurement policy and code of practice; and
- Be an accredited agency to procure goods and services.

The current list of Whole of Government contracts is available via <http://www.procurepoint.nsw.gov.au/> and must be used by Entities. Any proposal for exemption would need to be endorsed by the appropriate Delegate and approved by the Ministry of Health (Chief Procurement Officer).

The Ministry of Health and HealthShare NSW are accredited as “advanced procurement agencies”, and the Director General has subsequently granted the delegation to undertake the procurement of goods and services (not available under Whole of Government contracts) up to a value of \$30m¹, in accordance with the following guidelines:

Simple procurement (for all Entities)²:

- valued up to \$3,000, without seeking quotations;
- valued over \$3,000 and up to \$30,000, subject to at least one (1) written quote; and
- valued over \$30,000 and up to \$250,000 subject to three (3) written quotes; and

Complex and Strategic procurement (for Ministry of Health and HealthShare NSW)³:

- valued over \$250,000 and up to \$30m, subject to tendering and/or related industry participation.

These procurement delegations are devolved to NSW Health staff in accordance to the Director General’s instrument of delegations, subject to the above guidelines.

AIM:

The procurement of goods and services by NSW Health is to provide supplies, in a timely manner, that are fit for purpose and sufficient in quality and/or quantity to meet NSW Health objectives at an affordable and sustainable cost.

The key policy principles supporting the above aim follow:

- the high standards of public sector governance are to be met by complying with required procurement procedures, codes of practice and financial delegations as these provide the legal rights and obligations of NSW Health staff to procure goods and services;

¹ All dollar values expressed in this manual represent the total cost and are inclusive of GST

² Further guidance on simple procurement is provided in a following dedicated chapter

³ Further guidance on complex and strategic procurement is provided in following dedicated chapters

- value for money is to be achieved by seeking best prices for simple supplies, considering the total cost of ownership for more complex and strategic supplies, and employing innovative strategies to reduce overall costs;
- risk is to be managed by ensuring that strategies developed for the procurement of goods and services, across all aspects of planning, implementation, management and closure, are continually focussed on the mitigation of evolving risks;
- transparency, accountability, responsiveness and fairness in dealing with all government stakeholders, industry and the community are to be ensured; and
- the Government's commitment to broader community requirements such as a sustainable environment, opportunities for small to medium enterprises and disability enterprises participation, is to be realised.

SCOPE:

This manual is the sole source of goods and services procurement policy for NSW Health, replacing both the Supply Procedures, and the Purchasing and Supply manuals.

References to further guidance on relevant procurement procedures provided by NSW Health, NSW Procurement (Department of Finance and Services) and/or other authoritative sources are provided at the end of each chapter.

Further detail is provided by PD2013_023 Procurement and Disposal of Goods and Services.

KEY REQUIREMENTS:

- 1 All NSW Health staff are to comply with NSW Procurement policy regarding the procurement of goods and services (see references below).
- 2 All NSW Health staff are to comply with the policies of this manual that complement the above NSW Procurement policies.
- 3 The procurement of all goods and services is to adopt the following seven (7) step/stage process, the extent to which being primarily a function of the procurement project's monetary value and risk profile:
 - Needs analysis;
 - Funding approval;
 - Procurement planning;
 - Preparation of Market Documents;
 - Evaluation;
 - Contract management; and
 - Procurement evaluation.
- 4 The accreditation granted to NSW Health by the Board, require for all complex and strategic procurement projects that:
 - Entities are to consult with HealthShare NSW during the procurement planning and procurement evaluation stages;
 - HealthShare NSW is responsible for the conduct of the Market Document Preparation and Evaluation stages for all non-Ministry projects or, at its discretion, the governance oversight of these stages;

- Ministry Branches are to consult with the Ministry's Procurement Advisory Service (PAS) during the procurement planning, market document preparation and evaluation stages; and
 - PAS is available to advise on the governance oversight required for these stages of all Ministry projects.
- 5 All NSW Health staff procuring goods and services must also be accountable for their actions and to use public monies efficiently and effectively in accordance to the Public Finance and Audit Act 1983.

OTHER REQUIREMENTS:

1 Requisition

Entities are to acquire goods and services from existing Health or Whole of Government contracts before considering any new procurement, noting that there is no monetary limit to purchasing from existing contracts, other than that set by the Entity's own internal financial delegations.

2 Purchase Orders

All procurement of goods and services requires a Purchase Order. For any emergency purchases, e.g. theatre, emergency department etc, where time does not allow for a formal Purchase Order to be raised, the Finance Director of the LHD is to establish an alternative process which includes the issue of a confirmation order to the supplier as soon as practicable after supply of the urgently required goods or services and prior to issue of an invoice.

3 Records

Records of the procurement and disposal of goods and services, especially concerning decisions and reasons for tender evaluation and selection, and contract variations are to be kept in a manner that facilitates auditing and other normal processes of accountability, in accordance to the State Records Act 1998.

4 Tender/Contract Tenure

Tenders cannot be invited to cover a period exceeding five (5) years without the endorsement of the Chief Procurement Officer and the approval of the Director General, nor can any contract be varied or extended so that the total tenure of the contract would be more than five (5) years without the endorsement of the Chief Procurement Officer and the approval of the Director General. In seeking such endorsement and approval, exceptional circumstances must be demonstrated.

5 Competition

Entities are not permitted to mandate requirements for prospective suppliers to have experience in providing goods and services to the NSW Government or a government agency, without the endorsement of the Chief Procurement Officer that exceptional circumstances apply. However, when evaluating prospective suppliers through an open competitive procurement process (e.g. tendering), entities may use a weighted score to recognise a supplier's evidence of government or equivalent experience.

6 Service Delivery

Any Entity considering a procurement strategy involving the delivery of clinical services by the private sector, is to notify the Ministry of Health (Business and Asset Services Branch) prior to the completion of the business case.

7 Definitions

Authorised Officer means an officer of HealthShare NSW who is responsible to the Delegate of an Entity for the management and administration of the tendering process.

Client Reference Group means a small team of senior officers representing the principal users of the supplies within NSW Health and, in the case of a Lead Agency contract established by NSW Health, from any other agencies using the contract.

Contract or Category Manager means the officer responsible for managing an approved contract or category.

Delegate means the officer of an Entity who is solely responsible and accountable for the procurement of goods and services, in accordance to the Director General's instrument of delegations.

Entity means an element of NSW Health that procures goods and services and is managed by a Branch Director or Chief Executive or equivalent, i.e. the Ministry of Health branches, HealthShare NSW, Ambulance Service of NSW, Health Infrastructure, NSW Health Pathology, Local Health Districts, and Statutory Health Corporations including: Sydney Children's Hospital Network, Justice Health & Forensic Mental Health Network, Clinical Excellence Commission, Agency for Clinical Innovation, Bureau of Health Information, Health Education and Training Institute, NSW Kids and Families, Cancer Institute NSW, etc.

Goods include, without limiting the generality of the expression, plant, machinery, motor vehicles, tools, furniture, floor coverings, office equipment, scientific apparatus, appliances, hardware, medical and pharmaceutical supplies, information technology software and hardware, fuel and provisions.

Lead Agency means a major NSW Government ministry, department or organisation, such as NSW Health and the Department of Finance and Services, that is accredited by the Board to procure goods and services for use by itself and/or other state institutions/organisations.

Non Metropolitan Areas means that part of the State of NSW that **excludes** the following local government areas: Ashfield, Auburn, Bankstown, Blacktown, Blue Mountains, Botany Bay, Burwood, Camden, Campbelltown, Canada Bay, Canterbury, Fairfield, Gosford, Hawkesbury, Holroyd, Hornsby, Hunters Hill, Hurstville, Kogarah, Ku-rin-gai, Lane Cove, Leichhardt, Liverpool, Manly, Marrickville, Mosman, Newcastle, North Sydney, Parramatta, Penrith, Pittwater, Randwick, Rockdale, Ryde, Strathfield, Sutherland, Sydney, The Hills, Warringah, Waverley, Willoughby, Wollondilly, Wollongong, Woollahra, and Wyong.

Procurement Advisory Board means a group of senior officers chaired by the Entity's Chief Executive or Branch Director or equivalent (or their delegate) with membership from such areas as contract/category management, clinical, user, finance, and legal etc to provide governance assurance of all those complex and strategic procurement projects for which the Chief Executive or Branch Director or equivalent is accountable.

Project Steering Committee means the group of officers that advise the Responsible Officer in managing a single procurement project over the value of \$250,000, with membership from such areas as contract/category management, clinical, user, finance, and legal etc, noting that

for projects valued over \$5m, representation is to include Business and Asset Services Branch or HealthShare NSW.

Responsible Officer means a staff member of NSW Health appointed by the appropriate Delegate to conduct all or part of the procurement of goods and services.

Services include, without limiting the generality of the expression, advisings (other than legal advising), consultancies, information technology projects, printing and the performance of professional or trade operations of any kind.

Value for Money means a balanced benefit measure covering quality levels, performance standards, risk exposure, other policy or special interest measures (e.g. environment impacts), as well as price. Generally, value for money is assessed for increasingly complex supplies on a 'whole of life' or 'total cost of ownership' basis, which includes the transitioning in, contract period and transitioning out phases of a contractual relationship. It is often used in the sense of the 'long term sustainability of value for money', denoting that NSW Health focuses on choices that ensure value for money outcomes are promoted and protected in successive anticipated contracts. For simple supplies value for money will generally be focused on price.

RELATED NSW HEALTH PROCUREMENT POLICY GUIDELINES:

Procurement and Disposal of Goods and Services (PD2013_023 of 7 August 2013):

Director General's Procurement Delegations:

<http://10.192.65.122/pas/Pages/ProcurementNews5.aspx>

Delegations Manual:

<http://www.health.nsw.gov.au/policies/manuals/Pages/combined-delegations.aspx>

Records Management – Department of Health (PD2009_057 of 24 Sep 2009 of 24 Sep 2009):

http://www.health.nsw.gov.au/policies/pd/2009/PD2009_057.html

Accounts and Audit Determination for Public Health Organisations of 1 Jan 1998:

<http://www.health.nsw.gov.au/policies/manuals/Pages/accounts-audit-determination.aspx>

RELATED PROCUREMENT TEMPLATES AND FORMS:

PAS

pas@doh.health.nsw.gov.au

Procurement Portal:

<http://10.192.65.122/pas/>

LINKS TO RELEVANT EXTERNAL POLICY WEBSITES:

Whole of Government Contracts:

<http://www.procurepoint.nsw.gov.au/>

<https://www.procurepoint.nsw.gov.au/before-you-buy/contract-user-guides>

NSW State Records Act 1998:

<http://www.records.nsw.gov.au/about-us/state-records-act-1998>

NSW Procurement Six (6) Stage Process:

<https://www.procurepoint.nsw.gov.au/policy-and-reform/goods-and-services/six-stage-process-procurement>

VERSION CONTROL INFORMATION:

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2. GOVERNANCE

CONTEXT:

NSW Health seeks to observe high ethical standards and conduct in commercial engagements. Government and public officials must be able to demonstrate high levels of integrity in processes while pursuing value for money outcomes for the NSW Government and meeting the public interest.

KEY REQUIREMENTS:

Commercial engagements by NSW Health entities for procuring goods and services must be consistent with the following process requirements:

1 Governance Assurance

1.1 Roles for the Entity

- The Chief Executive or Branch Director or equivalent of the Entity is responsible and accountable for the procurement of goods and services in accordance to the Director General's Instrument of Delegations.
- A Procurement Advisory Board is to be established by the Chief Executive or a Branch Director or equivalent to provide assurance that governance issues have been appropriately managed over all seven stages of all procurement projects conducted by the Entity.
- A Responsible Officer is to be appointed by a Chief Executive or Branch Director or equivalent, to manage all seven stages of a procurement project and, for projects valued over \$250,000 or which attract high risk, to establish a Project Steering Committee to provide project assurance.

1.2 Roles of Others

- For strategic and high risk complex procurement projects, an independent probity auditor should be appointed by the Responsible Officer to advise on the planning and the management of the project through the Evaluation stage.
- PAS is available to provide ongoing general probity advice, especially to Ministry Branches on the planning, market document preparation, and evaluation stages.
- HealthShare NSW is to ensure Entities have appropriate Governance structures in place and may participate on Governance Committees where appropriate.
- The Procurement Governance Committee is to endorse the planning and evaluation stages of all strategic procurement projects and all NSW Health Lead Agency projects.

2 General requirements

Commercial engagements usually involve a bidding process, resulting in successful and unsuccessful bidders. Engagement processes are governed by laws as well as by NSW Government policies. In carrying out such processes, all officers must abide by the NSW Health Code of Conduct.

3 Integrity and impartiality

Responsible Officers need to treat bids and potential bidders in a fair and even handed way, providing bidders with the same information and avoiding preferential treatment, consistent with the approved procurement process and tender evaluation criteria.

4 Effective competition

The procurement process should optimise effective competitive tension to maximise value-for-money opportunities for government.

In the event that the Responsible Officer has the reasonable expectation, in accordance with the approved evaluation process, that a bid has no likelihood of being successful, the bid may be set aside i.e. it is not necessary for that bid to continue to be engaged in the competitive process.

5 The procurement process

The procurement process for a commercial engagement should be considered and settled before the competitive process starts. The strategy and planning for the procurement process must be commensurate with the estimated monetary value and the level of risk to government arising from the engagement. Where relevant, documentation for the procurement process should address how the following are dealt with:

- **Develop the business case:**
 - (i) Needs analysis;
 - (ii) Benefits to be realised; and
 - (iii) Cost benefit analysis.

- **Establish the procurement strategy:**
 - (i) use of existing Whole of Government or Lead Agency contracts
 - (ii) consideration of the market's capability and capacity to respond;
 - (iii) appreciation of government wide aspirations, industry issues and community expectations, e.g. Work Health and Safety (WH&S);
 - (iv) risk analysis; and
 - (v) quotations, or tendering.

- **Ensure the proper conduct of the process:**
 - (i) completeness, security and confidentiality of information and documentation;
 - (ii) declaration and management of conflicts of interest;
 - (iii) communication processes during the engagement process;
 - (iv) any process audit requirements and the requirement to appoint a probity adviser; and
 - (v) variations to process, including changes made in the scope of the purchase.

- **Determine the selection process:**

conditions of the tender, including the tender evaluation criteria and defining how late and non-conforming bids may be managed.

- **Manage the contract/category of supplies:**
 - (i) contract specifications, terms and conditions address the identified risks; and
 - (ii) management of the contract/category is planned and resourced.

To maximise value for money outcomes, it is expected that any procurement process will be selected or tailored to deal with the risks of the engagement effectively and efficiently.

For all projects valued over \$250,000, the above appreciation of the procurement process will be recorded in a procurement plan.

6 Consistency and transparency of process

Each commercial engagement must be conducted in a transparent and fair manner, consistent with a documented selection process that is to be described generally to all potential bidders, noting that the evaluation plan detailing criteria, their respective weightings etc is not to be provided to potential bidders. While the Responsible Officer may make changes to the documented process, and the terms and conditions of tender documentation may provide for such changes, any changes or variations to the process must be made in a way which:

- is not likely to provide (or be perceived to provide) corrupt or non-meritorious preference to any bidder; and
- is cognisant (and is seen to be cognisant) of the need to minimise unwarranted additional costs for a bidder.

In making a change, consideration must be given to the risk that government may be liable to compensate bidders affected by the change.

To assist transparency, the award of all contracts valued in excess of \$150,000 is to be publically disclosed (see below for details).

7 Security and confidentiality

Where relevant, the Entity should specify a process for both government and the private sector for receiving and managing information. The process should ensure the security and confidentiality of intellectual property and proprietary information, to the extent allowed by law and government policy.

8 Identification and resolution of conflicts of interest

The Entity must ensure that processes are adopted to identify, declare and address any actual or perceived conflict of interest throughout the procurement process.

All NSW Health staff, including consultants and contractors, must disclose in writing to their immediate superior or other appropriate senior officer, any financial or other interest held by them immediately upon becoming aware that a potential conflict between personal interest and official duty, whether real or apparent, has arisen or is likely to arise.

9 Segregation of Duties

The Entity is to ensure that there is a satisfactory segregation of duties across the procurement process based on an assessment of risk. Traditional segregation of duties includes separating proposal/business case submission from approval, evaluation of responses from approval, requisition ordering from receipt/acceptance of supplies, requisition ordering from payment of invoices, and receipt/acceptance of supplies from the payment of invoices.

10 Accountability

The Delegate, nominated by the Chief Executive or Branch Director, must ensure that a Responsible Officer is appointed for each procurement project with direct tasking for ensuring the adherence to procurement policy guidance and related procedures, and to make project-specific decisions in relation to this policy and procedures.

The Delegate is to establish a Project Steering Committee to advise the Responsible Officer on procurement policy requirements, governance aspects and procedural matters for projects valued over \$250,000 or that attract high risk.

The Chief Executive or Branch Director is to establish a procurement advisory board to provide assurance, although remaining solely accountable for all procurement projects for which they

are responsible, regardless of the devolution of their authority through the Delegate to the Responsible Officer.

11 Use of probity practitioners

Where the risk and complexity associated with a procurement process is considered high, the Responsible Officer has the option of appointing a designated probity auditor and/or probity adviser to provide one or more of the following:

- independent assessment and/or advice throughout the procurement process as to whether processes are:
 - (i) developed according to relevant NSW Government policies (including this policy) and where relevant Commonwealth legislation; and
 - (ii) managed according to the procurement process and the procurement plan.
- ongoing independent advice on probity issues (can be provided by PAS); and
- an independent and appropriate sign-off, at designated milestones in the market documents preparation and evaluation stages, on probity requirements.

The selection of probity practitioner(s) should be based on the experience and the extent of involvement required for the particular nature of the risks in the procurement process. As a minimum, all public officials or non-government personnel nominated as probity practitioners should have completed government-accredited procurement training or have a level of competency and professional standing acceptable to the Responsible Officer.

Where the procurement process is very large and/or involves highly complex risks, the Responsible Officer may consider it necessary to engage an external independent probity practitioner from the NSW Government's Prequalification Scheme for Consultants: Performance and Management Services.

12 Visiting Company Representatives

Entities, especially those involved in the usage of clinical products and equipment, are to develop procedures for visiting company representatives to ensure reasonable and fair access, safe and ethical conduct by all parties, and management controls over access, identification, samples, documentation and any related purchasing. These controls are also to include the roles and responsibilities of key staff, especially the Clinical Products Manager.

Such local procedures are to comply fully with NSW Health procurement policy and practices, as well as with NSW Health's Code of Conduct.

13 Contract Requirements that Limit Competition

When entering into arrangements with a supplier of goods and services, Entities are not permitted to mandate requirements for prospective suppliers to have experience in providing goods and services to the NSW Government or government agencies, unless exceptional circumstances can be demonstrated. However, when evaluating prospective suppliers through an open competitive procurement process (e.g. a tender), Entities may give a weighted score to recognise a supplier's evidence of government or equivalent experience.

RELATED NSW HEALTH PROCUREMENT POLICY GUIDELINES:

Code of Conduct (PD2012_018 of 29 Mar 2012):

http://www.health.nsw.gov.au/policies/pd/2012/PD2012_018.html

Conflicts of Interest Gifts and Benefits (PD2010_010 of 8 Feb 2010):
http://www.health.nsw.gov.au/policies/pd/2010/PD2010_010.html

Corrupt Conduct – Reporting to the Independent Commission Against Corruption [ICAC] (PD2011_070 of 2 Nov 2011):
http://www.health.nsw.gov.au/policies/pd/2011/PD2011_070.html

Disclosure of Contract Information (PD2011_011 of 7 Feb 2011):
http://www.health.nsw.gov.au/policies/pd/2011/PD2011_011.html

RELATED TEMPLATES AND FORMS:

Declaration of Confidentiality and Conflicts of Interest:
[Declaration of Confidentiality and Conflicts of Interest](#)
[Declaration of Confidentiality and Conflicts of Interest Short Form](#)

LINKS TO RELEVANT EXTERNAL POLICY WEBSITES:

NSW Procurement Framework:
<http://www.procurepoint.nsw.gov.au/policy/goods-and-services/nsw-procurement-board-policy-framework>

NSW Code of Procurement Practice:
<http://www.procurepoint.nsw.gov.au/policies/nsw-government-procurement-information>

NSW Procurement Guidelines: Service Contracting 2007:
http://www.procurepoint.nsw.gov.au/sites/default/files/documents/guidelines_service_contracting.pdf

NSW Procurement Guidelines: Occupation Health and Safety, 2006:
http://www.procurepoint.nsw.gov.au/sites/default/files/documents/guidelines_ohs_procurement.pdf

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3. RISK MANAGEMENT

CONTEXT:

Risk management is central to NSW Health's overall procurement management philosophy, noting that the mitigation of general and specific risks forms the basis of its policies, strategies and plans to procure and manage the delivery goods and services to clients.

All projects embody a degree of risk that can never be completely eliminated, noting that different risks may evolve through the varying stages of the procurement process. However, risks can be identified and managed. This management of risks requires containment strategies to mitigate risk and contingency planning to respond to other risks that may emerge.

The aim of procurement risk management is to protect and enhance the reputation and efficacy of NSW Health by avoiding, or minimising the potential for, any harm arising from its relationship with potential and existing suppliers.

KEY REQUIREMENTS:

1 Consideration of Risk

All procurement projects should undertake a consideration of risk, the extent to which depends on the nature of the supplies. Such consideration may include the following factors:

- Risk Identification: identifying risks associated with the project.
(What incident could occur and why would it occur)
- Risk Assessment: the likelihood and magnitude of the risks.
(Develop a likelihood and consequence matrix)
- Risk Mitigation: strategies for pre-empting and treating the occurrence of a risk.
(Identify options for reducing the likelihood of the risk occurring and treatment strategies if a risk realises ie contingency plans)
- Risk Allocation: detailing responsibility for managing a risk.
(Specifying the degree of responsibility for avoiding the occurrence of the risk and the treatment of the risk should the risk realise)
- Monitoring and Control: identifying new risks as they emerge.

The above considerations of risk are to be fully appreciated in developing a project's procurement strategy, for recording in the project's procurement plan, ie the procurement strategy is comprised of those actions required to mitigate the majority of priority risks. Actions to address risk may be used either separately or in combination, and include:

- **avoiding** the risk by not proceeding with the element that attracted the risk and adopting an alternate approach;
- **eliminating** the risk by removing the circumstance from which the risk may arise;
- **reducing** the risk by taking appropriate action to lessen the risk's likelihood and/or consequence;
- **transferring** the risk by allocating the risk to another party more able to control or accept the risk; and
- **accepting** the risk by making an informed decision, after a thorough assessment, that the risk is unavoidable.

In deciding on mitigation or treatment actions to address medium or high risks it is important to consider two principles:

- the cost of managing risks needs to be commensurate with the benefits obtained; and
- the responsibility for addressing risks must be allocated to those persons or parties which can best control and manage them.

2 Risk Management Register

For all projects valued over \$250,000 or attracting high risk, a risk management register is to be established to guide the development of the related procurement plan, addressing the above factors, and included as an annex to the procurement plan. This register is to list perceived risks, their rating (likelihood x consequence), the mitigation or treatment actions to be implemented against each of them (eg monitoring, contingency plans, etc), and the person/party responsible for each action.

The procurement plans for all strategic procurement projects (ie projects valued in excess of \$10 million) or for those complex procurement projects (valued over \$250,000 and up to \$10m) that attract high risk, are to have their risk management registers reviewed at each of the seven (7) steps/stages of the procurement cycle.

When classifying risks, NSW Health's risk matrix is to be used (see policy directive below for details).

OTHER REQUIREMENTS:

Contractual Provisions for Risk Mitigation, Defaults and Remedies

- Insurance provisions (professional indemnity, third party legal liability, all risks and public and product liability insurance) are to reflect the assessment of risk arising from the project's procurement plan.
- Legal Branch advice should be sought in developing contracts for all strategic procurement projects or those complex procurement projects that attract high risk, where standard NSW Health procurement instruments (e.g. RFT, contracts etc) are not intended to be used.

RELATED NSW HEALTH POLICY AND GUIDELINES:

Risk Management–Enterprise-Wide Policy and Framework–NSW Health (PD2009_039 of 30 Jun 2009):

http://www.health.nsw.gov.au/policies/pd/2009/PD2009_039.html

RELATED TEMPLATES AND FORMS:

Nil

LINKS TO RELEVANT EXTERNAL POLICY WEBSITES:

NSW Procurement Guidelines: Risk Management 2006:

http://www.procurepoint.nsw.gov.au/sites/default/files/documents/guidelines_risk_management.pdf

NSW Government Self Insurance Corporation: Managing Contracting Risk, A Guide for NSW Government Agencies 2010:

http://www.auditrisk.net.au/documents/SunCorp_ManagingContractRisk.pdf

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4. SIMPLE PROCUREMENT

CONTEXT:

Simple procurement covers conduct of procurement below the public tender threshold of up to \$250,000⁴, but with the standards of probity required for commercial engagement to be fully applied.

It should be noted that a significant amount of expenditure falls in this value range and is of importance to small business that rely on government contracts to succeed and grow. In seeking quotes from the open market it is important to recognise that the small business sector is dynamic and innovative, and therefore it is important to consider not just inviting the regular businesses known to the agency to quote.

Seeking quotes ensures a value for money outcome by providing a comparison of supplier bids. Consideration could be given to seeking more than the minimum number of quotes to cover any eventuality of one or more suppliers not submitting a bid. Nevertheless, it is important to balance the number of quotes sought with the concern not to burden a large number of suppliers with unreasonable expectations of work.

KEY REQUIREMENTS:

- 1 **Purchase of Goods or Services**, not available under an existing Whole of Government or Leading Agency or a NSW Health contract:
 - **Less than \$3,000:** No quotation required;
 - **Over \$3,000 and up to \$30,000:** A minimum of one (1) written quote is required; and
 - **Over \$30,000 and up to \$250,000:** A minimum of three (3) written quotes are to be provided.

A Purchasing Requisition, covering the preferred quote, or a signed contract if awarded, is required to raise a Purchase Order.

Payment will be approved based on the existence of the appropriate Purchase Order and the receipt of an invoice, following written advice by the Responsible Officer (using a stamp on the invoice) that the supplies or services have been delivered and are acceptable, and that the amount of payment sought is in accordance with the with the preferred quote or contract's price and payment schedule.

- 2 **Purchase from a Standing Offer Agreement (Whole of Government Contracts, Lead Agency or NSW Health contract)**

The rules of use adopted for the Standing Offer Agreement apply when purchasing from such an Arrangement.

If the Agreement is a panel contract, then value for money should be demonstrated by seeking at least three quotes from panellists. In this instance the preferred quote and reference to the panel contract, is required to raise a Purchase Order.

If the Agreement is between a single supplier and NSW Health, then the signed contract is required to raise a Purchase Order.

Payment will be approved based on the existence of the appropriate Purchase Order and the receipt of an invoice, following written advice by the Responsible Officer (using a stamp on the invoice) that the supplies or services have been delivered and are acceptable, and that the

⁴ All dollar values in this manual represent the total cost and are inclusive of GST

amount of payment sought is in accordance with the preferred quote or contract's price and payment schedule.

3 Exemption from Three Quotes

An exemption, from the provision of three (3) written quotes for the purchase of goods and services valued over \$30,000 and up to \$250,000, in rare and unusual circumstances can be approved by the Chief Procurement Officer, subject to reasonable justification being documented for the purposes of audit, and its disclosure to HealthShare NSW (by Entities) or to PAS (by Ministry Branches) as a non-compliant action.

4 Purchases from an Australian Disability Enterprise (ADE)

Entities may procure goods and services from an ADE for any value amount, without seeking alternate quotes/tenders, and are exempt from Whole of Government or Lead Agency contracts, as long as value for money can be documented.

5 Entities Located in Non Metropolitan Areas

Entities located in Non Metropolitan Areas can purchase goods and services valued up to \$5,000 (including GST) from any source, despite those goods and services being available on specified Whole of Government contracts, provided that the supplier's rates for the goods and services are reasonable and consistent with normal market rates.

6 Government Web Sites

Entities and Branches are to use www.tenders.nsw.gov.au/health to seek and/or to receive quotes from suppliers, unless when accessing Whole of Government standing panel arrangements or prequalification scheme contracts, where the e-Quotes website is to be used, i.e. <https://www.procurepoint.nsw.gov.au/buying/nswbuy-buyers/equote>

OTHER REQUIREMENTS:

1 The Unacceptability of Splitting Identical Need

It is unacceptable to divide a procurement process into separate parts or use a particular method for calculating the estimated total value of a purchase for the purpose of circumventing the above requirements.

2 The Independence of the Quotes Sought

The quotes sought should preferably not be from related entities of the same organisation unless it can be demonstrated that the company requested to quote operates with a high degree of independence or autonomy from other parts of its business.

3 Consistency of Information and Assessment

Information provided to suppliers invited to quote must be identical and the evaluation of offers must be based on identical criteria.

Any subsequent information regarding the purchase requirement must be made available to all potential suppliers, and any written answer to a question from one supplier must be forwarded to all suppliers, unless such an action would divulge intellectual property or commercial-in-confidence material.

The mandated framework for specifying requirements follows:

Context

Background and factors that impact on the requirement including government policy, NSW Health priorities, risks, current supply arrangement gaps, potential users of the requirement,

expertise of the users who may interface with the requirement, existing settings into which the requirement will be sited, etc.

Purpose

The key objectives of the project/requirement that the procurement is to satisfy including the benefits intended to be achieved.

Output

A description of the project deliverables required of the business including factors that may impact on the deliverables. Consideration should be given to clearly defining what is in and out of scope when defining project deliverables.

Submission

A schedule of what to submit, the scope of material required, selection criteria, resources of the business to undertake the project, specialist staff to be allocated to the project, warranties, guarantees, costs structure, payment details, suggested milestones, bid delivery instructions and submission date.

Other

Project contact officer, opportunity to attend a project briefing session, opportunity to visit site for supply delivery/installation, specific technical information, material available from the NSW Health website, etc.

- 4 Evaluation.** Value for money is the essential test against which any procurement output is to be justified. It is also essential that the assessment of offers is robust, systematic and unbiased to ensure the application of proper processes and the achievement of the procurement objectives.

- **Value for Money**

Achieving user and system requirements, quality standards and service benchmarks is considered more important than obtaining only just the lowest purchase/tender price. Value for money is the basis for comparing alternatives within a wider context so that the optimal offer can be selected.

- **Adopting a Systematic Evaluation Regime**

All offers must be evaluated in a consistent manner against the evaluation criteria adopted for the quotation. The use of a weighted matrix analysis is a recommended method for analysing and comparing tenders in a detailed and consistent manner.

- **Cost Comparison**

Total project costs not just tender price should be assessed in a detailed systematic manner. This assessment must be undertaken separately from other evaluation criteria.

5 Requisitioning/Purchasing/Leasing

Specific additional guidance on the requisition, purchase or lease of certain goods and services, including credit/procurement cards, cabcharge use, vehicles, travel, etc can be found under the Policy Directive PD2013_023 below and/or on the Ministry of Health and HealthShare NSW intranet sites.

6 Extension or Variation

All contracts arising from quotations, i.e. under \$250,000 in value, other than those derived from Whole of Government contracts, are not to be varied or extended.

7 Disclosure of Tenders and Contracts

All simple procurement solicitation and resulting contracts (including through purchase orders) at a value in excess of \$150,000 are to be disclosed in accordance with http://www.health.nsw.gov.au/policies/pd/2011/PD2011_011.html.

RELATED NSW HEALTH POLICY AND GUIDELINES:

Procurement and Disposal of Goods and Services Procedures (PD2013_023 of 7 August 2013):

Disclosure of Contract Information (PD2011_011 of 7 Feb 2011):

http://www.health.nsw.gov.au/policies/pd/2011/PD2011_011.html

RELATED TEMPLATES AND FORMS:

Procurement Portal:

<http://10.192.65.122/pas/>

LINKS TO RELEVANT EXTERNAL POLICY WEBSITES:

NSW Procurement Guidelines: Simple Procurement 2007:

http://www.procurepoint.nsw.gov.au/sites/default/files/documents/guidelines_simple_procurement.pdf

NSW Government Agency Procurement from Australian Disability Enterprises:

<http://www.procurepoint.nsw.gov.au/policies/australian-disability-enterprises>

VERSION CONTROL INFORMATION:

| | |
|---------------------|--|
| Version Number | 1.0 |
| Release Date | May 2013 |
| Further Information | Business and Asset Services |
| Phone | (02) 93919215 |
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5. COMPLEX PROCUREMENT

CONTEXT:

Complex procurement projects are defined as those projects valued over \$250,000 and up to \$10m⁵ and generally attract only low to medium risks. A key factor in the appreciation of risk is the judgement that such projects are not likely to require any significant contract negotiation as an adequate number of suitable tenders is expected to be substantially compliant to all requirements. In the event that negotiations are eventually required, then Entities/Branches are to comply with the guidance on contract negotiations for strategic procurement.

For complex procurement projects, that are not employing existing Whole of Government or NSW Health panel contracts, tendering to the open market is the norm, and Entities/Branches are responsible for conducting a process that is fair and equitable to facilitate opportunities for businesses in contracting with Government.

All complex procurements require a Small and Medium Enterprise (SME) Opportunity Statement to be included in the project's procurement plan in accordance to the NSW Procurement's SME Policy Framework (for further details see External Website below).

KEY REQUIREMENTS:

- 1 For all intended purchases over \$250,000 or that attract high risk, a business case is to be raised listing the benefits to be realised and, if the project is approved by the appropriate Delegate, a project steering committee is to be established, and a procurement plan based on an assessment of risk, and with a supporting tender evaluation plan, is to be raised.
- 2 In developing the procurement plan, Entities/Branches are to employ one of the following strategies:
 - use existing Whole of Government or NSW Health contracts (that have already been tendered) wherever available; or
 - adopt open tendering, i.e. a one stage process which involves the release of a Request for Tender (RFT) to the open market; or
 - conduct a two stage approach involving first an Expression of Interest (EOI) or Request for Information (RFI) or Request for Proposal (RFP), i.e. an open stage, followed by a RFT to a selected number of suppliers that have satisfied set requirements in capability and capacity (ie pre-qualifications) following an assessment of responses to the EOI, RFI, or RFP.

Any exemption to the above forms of tendering for projects valued in excess of \$250,000 must be endorsed by the appropriate Delegate and approved by the Chief Procurement Officer.
- 3 HealthShare NSW is responsible for the conduct of the Preparation of Market Documents and Evaluation stages for all non-Ministry complex and strategic projects or, at its discretion, the governance oversight of this stage; and PAS is responsible for the governance oversight of the these stages for all Ministry complex and strategic projects.

OTHER REQUIREMENTS:

1 The Unacceptability of Splitting Identical Need

It is unacceptable to divide a particular procurement or procurement phase into separate parts or use a particular method for calculating estimated total value for the purpose of circumventing an approach to the open market.

⁵ All dollar values in this manual represent total costs and are inclusive of GST

2 Purchase from a Standing Offer Agreement (existing Whole of Government or NSW Health Panel Contracts)

The rules addressing financial thresholds do not apply when purchasing from an existing Standing Offer Agreement, and there is no requirement to conduct a tender as the open market has already been used in establishing the Agreement. Wherever practicable, Entities/Branches are to seek a minimum of three (3) offers from panel members, if prices are not fixed, to achieve value for money.

3 Restricted Tendering

- Short Listing of tenders can occur following the issue of an RFT to the open market, provided:
 - (i) the relevant requirements and short listing criteria have been specified beforehand in the RFT;
 - (ii) a documented evaluation of all tenders has occurred in accordance to the above; and
 - (iii) the rating of all tendered proposals/responses of suppliers allows for a minimum of three (3) tenders for final evaluation.
- Selective Tenders can be restricted to a list of:
 - (i) suppliers on a Whole of Government or NSW Health contract panel;
 - (ii) pre-registered suppliers that have been selected after responding to an EOI, RFI or an RFP;
 - (iii) invited suppliers, following approval by the Chief Procurement Officer, where there is very limited number of suppliers in Australia, New Zealand and the United States, or where only a few suppliers have immediately available critically required supplies in periods of a declared emergency; or
 - (iv) pre-qualified suppliers that have been granted a licence or comply with specific legal requirements that exist independent of the procurement process.

4 e-Tendering

All tenders must be published on the NSW Health e-tenders website (www.tenders.nsw.gov.au/health), along with the ability to download relevant tender documents and the name of the Authorised Officer. Tender respondents are also required to submit their tenders electronically through this web site.

5 Opening Periods

The normal period of an open tender published on www.tenders.nsw.gov.au/health is not less than 30 calendar days. Under the following circumstances the period may be reduced to not less than 14 calendar days:

- commercially readily available goods or services are being procured;
- an urgent need has arisen;
- a separate notice to the RFT has been posted, at least 30 calendar days and not more than 12 months in advance, describing the procurement, the time limit either to lodge the tender or to apply to participate in a tender, and the source where the RFT can be obtained; and/or
- a regularly recurring procurement.

6 Supplier Selection

The selection of the preferred tenderer is to be based solely on the evaluation plan.

In the event of being unable to select a preferred supplier after following the stated evaluation plan, the Entity can seek a further response from shortlisted tenderers, by releasing amended

requirements that are within the scope of the RFT, to determine best and final offers, provided that this process was identified in the RFT.

7 Complaints

Tender complaints are to be initially directed to the appropriate Authorised Officer. In the event that the complaint cannot be satisfactorily addressed, in accordance with the relevant Complaint Management System, the complainant is to be directed to Chief Procurement Officer.

The Chair of the Board to be advised of the complaint only if the Chief Procurement Officer is unable to resolve the issue.

RELATED NSW HEALTH POLICY AND GUIDELINES:

Complaint Management Policy (PD2006_073 of 29 Aug 2006):
http://www.health.nsw.gov.au/policies/pd/2006/PD2006_073.html

RELATED TEMPLATES AND FORMS:

Procurement Portal:
<http://10.192.65.122/pas/>

RFT Details form for Disclosure
<http://internal.health.nsw.gov.au/legal/goods.html>

LINKS TO RELEVANT EXTERNAL POLICY WEBSITES:

NSW Health e-tenders website:
www.tenders.nsw.gov.au/health

NSW Procurement: Procurement Planning
http://www.procurepoint.nsw.gov.au/sites/default/files/documents/procurement-planning-guidelines_3.pdf

NSW Procurement Guidelines on Tendering:
http://www.procurepoint.nsw.gov.au/sites/default/files/documents/tendering_guidelines-1_october_2011.pdf

NSW Procurement: SME Policy Framework 2013:
<http://www.procurepoint.nsw.gov.au/procurement-reform/about-nsw-procurement-reform/small-and-medium-enterprises-policy-framework>

VERSION CONTROL INFORMATION:

| | |
|---------------------|-----------------------------|
| Version Number | 1.0 |
| Release Date | May 2013 |
| Further Information | Business and Asset Services |
| Phone | (02) 93919215 |

6. STRATEGIC PROCUREMENT

CONTEXT:

The NSW Health is committed to delivering value for money in public funds expenditure. To this end, NSW Health is introducing a more strategic, data driven and analytical planning approach where informed procurement decisions lead to better value-for-money outcomes.

NSW Health seeks to improve the procurement of goods and services in terms of performance, cost and time by closely managing significant procurement projects that play a substantial role in delivering NSW Health outcomes, require a major allocation of resources and attract high risks.

KEY REQUIREMENTS:

Strategic procurement is mandatory for all projects valued in excess of \$10m⁶ and for all procurement projects where NSW Health establishes a Lead Agency contract, and is desirable for those complex procurement projects that have a high risk profile.

All the above strategic procurement projects are to develop a procurement plan, based on a thorough risk assessment, establish a Project Steering Committee, and to adopt the NSW Procurement Gateway Review System, except when renewing existing Whole of Government contracts.

All strategic procurement projects are to have RFTs encouraging tenderers to offer alternate proposals (in addition to that sought), and are to have contracts allowing NSW Health to take advantage of any contractor provided innovative proposals, within the scope of the RFT, throughout the tenure of the contract.

All strategic procurement projects are to include a Small and Medium Enterprise (SME) Participation Plan as a section in its procurement plan, in accordance with the SME Policy Framework (for further detail see External Websites below).

PAS is available to advise on the planning and execution of strategic procurement projects.

OTHER REQUIREMENTS:

The following factors are to be considered in strategic procurement and reflected in the Strategic Procurement Plan for the project:

1 Strategic sourcing

Strategic sourcing is a data-driven, analysis-rich methodology for developing sourcing solutions and managing the market engagement, negotiation and contracting stages of the sourcing process.

Strategic sourcing is based on the premise that optimal value for money can be best achieved by developing a detailed knowledge of consumption behaviour, the category being sourced and the supply base, before conducting tendering processes. This knowledge can then be applied to develop targeted sourcing solutions and market engagement strategies that are harmonised with the value drivers of both buyers and suppliers.

2 Opportunity analysis

The nature, scale and complexity of the supplies is analysed to determine if a strategic sourcing approach can deliver additional value over alternative approaches (ie complex

⁶ All dollar values represent total costs and are inclusive of GST

procurement methods). The deliverable of this phase should be an opportunity analysis with a preliminary estimate and documentation of the expected contract benefits.

3 Consumption analysis

Spend information is further collected and analysed to develop a complete and detailed understanding of the organisation's purchasing behaviour and requirements. This process assists in identifying inefficiencies and unnecessary complexities in purchasing behaviour and specifications. It also clarifies organisational expectations and requirements.

A Client Reference Group is to be formed to assist project management, in terms of specifications development, technical evaluation of tenders and category management planning.

4 Market analysis

Market analysis involves developing an in-depth knowledge of the category's supply market, supply chain structure and economics. An understanding of the supply market's value drivers is required to inform decisions on how best to approach the market, and how to access value-for-money opportunities to reduce supply costs without eroding reasonable and sustainable supplier margins.

5 Sourcing strategy selection

The selection of a sourcing strategy involves developing informed and targeted sourcing solutions which incorporate, and capitalise on, the knowledge and insights gained through consumption and market analysis. Value for money of potential sourcing solutions is considered in terms of 'total cost of ownership'. Total cost of ownership is the net cost of ownership of goods or services, including actual purchase price, as well as procurement, training, holding, operating, maintenance, disposal and administration costs. The total cost of ownership also considers the net environmental and economic costs incurred throughout production, ownership, use and disposal of the good or service.

6 Market engagement strategy

A market engagement strategy is to be developed taking into account the market's value drivers and the opportunity to optimise competitive pricing. Structured, fact-based and incisive tender documentation and evaluation methods that support the required outcomes form part of the market engagement strategy.

For strategic procurement projects it is often prudent to seek proposals from industry through a RFP as a means both to understand the availability of new capabilities, and their prospective impact on innovating NSW Health business processes, and to provide a short list for tendering.

7 Benefits realisation

The Benefits Realisation register established in the Business Case for a strategic procurement project is to be further developed following the above analysis of the capabilities likely to be offered by the market.

The project's statement of requirements is to be derived from the benefits sought.

8 Tendering

The tendering stage includes releasing tender documentation (tender evaluation criteria, draft contract etc.) that addresses and supports the selected sourcing strategy and the category management phase of the procurement. The Evaluation stage of all strategic procurement projects are to be developed and conducted in accordance to independent external probity advice.

9 Contract Negotiations and Award

Contract negotiations and signing of the contract are a critical phase that needs to be carefully prepared and managed. Entities/Branches are to ensure that the lead negotiator is to be issued with a negotiating directive from the appropriate Delegate with a clear set of outcomes to be achieved as well as financial thresholds not to be exceeded. Issues for negotiations generally arise from the tender evaluation of the preferred response; often addressing any outstanding deficiencies and/or any options (both solicited and/or alternate) offered by the supplier in response to the RFT.

The negotiating team may comprise of the lead negotiator supported by representatives from areas such as category management, finance and clients, as well as a legal adviser.

The lead negotiator is to provide a written report to the Delegate on the final outcomes of negotiations when seeking contract award and related funding approval.

RELATED NSW HEALTH POLICY AND GUIDELINES:

Nil

RELATED TEMPLATES AND FORMS:

Procurement Portal:

<http://10.192.65.122/pas/>

LINKS TO RELEVANT EXTERNAL POLICY WEBSITES:

NSW Procurement Gateway Review System:

<http://www.procurepoint.nsw.gov.au/before-you-buy/gateway-review-system>

NSW Procurement: SME Policy Framework 2013:

<http://www.procurepoint.nsw.gov.au/procurement-reform/about-nsw-procurement-reform/small-and-medium-enterprises-policy-framework>

VERSION CONTROL INFORMATION:

| | |
|---------------------|--|
| Version Number | 1.0 |
| Release Date | May 2013 |
| Further Information | Business and Asset Services |
| Phone | (02) 93919215 |
| Email | rlamb@doh.health.nsw.gov.au |

7. LEAD AGENCY CONTRACTS

CONTEXT:

Lead Agency contracts are a procurement arrangement established where Whole of Government Contracts do not exist and when an agency of the NSW Government has a specific requirement for frequently purchased goods and or services. Alternately, the Board may direct an Agency to establish a Lead Agency contract. Like Whole of Government contracts, they may not have fixed expenditure limits, can involve arrangements with one or more suppliers, and usually require no obligation on the Entity to purchase a particular quantity of the goods or services.

A Lead Agency contract generally reflects that the agency involved has accompanying specialist expertise in the procurement, management and operation of the subject supplies.

Lead Agency contracts may be used by all other government agencies and other public bodies, in accordance to the NSW Government's policy for collaborative and integrated services, subject to the approval of the lead agency, and satisfying certain conditions as noted in the Key Requirements.

KEY REQUIREMENTS:

1. NSW Health Lead Contracts

Lead Agency contracts are to use the strategic procurement approach regardless of the value of the contract and are to be managed by HealthShare NSW on behalf of Entities/Branches.

Use of a NSW Health Lead Agency contract is mandatory for all Entities and Branches.

2. Other Lead Agency Contracts

Entities/Branches are to consider the availability and suitability of Lead Agency contracts managed by agencies other than NSW Health in the determination of its procurement strategies.

3. Contract Arrangements

Lead Agency contracts generally involve a head agreement between the Entity and supplier(s). The head agreement can cover such matters as the terms and conditions of contract, performance requirements as well as how the Entity is to purchase under the head agreement using a standard purchase order or equivalent.

Agreements can be structured as follows:

- Sole or multiple suppliers (multiple suppliers constitute a panel arrangement); or
- Open or closed panels (where open panels are able to accept new suppliers at set or other times during the contract period whereas closed panels are restricted to the suppliers engaged at the commencement of the contract);

3.1 Closed panels

Closed panels are typically established through a contestable process that results in a set number of panel members for a given period of time. Closed panels may be appropriate when:

- fixed prices, fees or rates apply;
- there are specific requirements such as specialised skills and knowledge;
- regional or area based suppliers are needed to ensure responsiveness; and/or
- product differentiation exists in the marketplace.

3.2 Open panels

Open panels are utilised to allow for the addition of new service providers through subsequent procurement or qualification processes. The lead Entity must document how potential 'new' suppliers are to be added to the panel contract and the circumstances and evaluation criteria for doing so. Open panels may be appropriate when:

- prices or rates are indicative and may change up or down;
- there is diverse expertise or a large number of suppliers in the market place;
- the requirement is broad;
- the market is emerging or immature, and there is a likelihood of new entrants and changes over time;
- new products, providers and technologies are constantly emerging; and/or
- where there is a strong potential for the Entity's purchasing power to influence the market, which would be restricted if the panel was closed to new entrants.

3.3 Number of panel members

The number of panel members should be determined in a business case and finalised at the conclusion of the evaluation phase.

In determining the size of the panel, an Entity should consider:

- the anticipated amount of work to be performed;
- the need to provide choice of providers for users;
- the type and breadth of work to be performed and whether individual panel members are able to fulfil all requirements;
- the cost to the panel members in relation to the estimated work obtained; and
- a number that would ensure a reasonable level of work for all panel members.

4. Aggregated Demand

A Lead Agency contract should be established where an Entity has an opportunity for aggregating frequently used requirements. Therefore, the planning process should identify if other Entities and agencies also share similar requirements.

The planning process should consider the advantages and disadvantages of aggregating demand. For example, an Entity's negotiation position with suppliers may be strengthened, but at the cost of reducing the number of suppliers and impacting small business opportunities. Matters to consider include:

4.1 Advantages

- Better management of information;
- Greater purchasing leverage;
- Lower purchase prices; and
- Lower transaction costs.

4.2 Disadvantages

- Need for skilled procurement and contract management staff;
- Developing a situation where too few suppliers are operating and where surviving suppliers can raise their prices above competitive levels;
- Large contracts may pose barriers to entry for small firms; and
- Fewer and larger contracts may lock out suppliers that lose for a prolonged period of time.

5. Business Case Planning

Robust business case planning must be undertaken for each proposed Contract. A business case for a new arrangement is to address:

- project scope;
- benefits realisation and costs;
- organisational resource and management requirements;
- stakeholder analysis;
- demand analysis;
- spend analysis;
- market analysis;
- sourcing options;
- risk analysis;
- optimal path to market and tender strategies;
- contract/category management strategies;
- reporting strategies; and
- resourcing and training.

Prior to renewing a Lead Agency Contract, a high level review of the original business case should be undertaken by the Entity, in consultation with a Client Reference Group, to update the basis for re-establishment of the contract. The recommendation to renew or extend the Lead Agency Contract is to be approved by the appropriate Delegate.

OTHER REQUIREMENTS:

Nil

RELATED NSW HEALTH POLICY AND GUIDELINES:

Nil

RELATED TEMPLATES AND FORMS:

Nil

LINKS TO RELEVANT EXTERNAL POLICY WEBSITES:

NSW Premier and Cabinet: Guidelines for Collaboration and Integrated Services 1999:
<http://www.dpc.nsw.gov.au/announcements/circulars/1999/c1999-31>

NSW Treasury Guidelines for a Business Case:
http://www.treasury.nsw.gov.au/_data/assets/pdf_file/0020/12953/tpp08-5.pdf

VERSION CONTROL INFORMATION:

| | |
|---------------------|--|
| Version Number | 1.0 |
| Release Date | May 2013 |
| Further Information | Business and Asset Services |
| Phone | (02) 93919215 |
| Email | rlamb@doh.health.nsw.gov.au |

8. CONTRACT MANAGEMENT

CONTEXT:

Effective contract management of the provision of goods and services to Clients is a key component in achieving NSW Health outcomes.

The processes, structure and resources that will be applied to the contract management phase should be identified during the procurement planning stage.

Contract conditions should specify the reporting cycle and format, level of supplier personnel involvement, supplier/Entity systems integration requirements, etc.

KEY REQUIREMENTS:

Contracts Register for Simple Procurement

- 1 A single contracts register covering all the Entity's simple procurement projects is mandatory, detailing such issues as the nature of goods and services, supplier details, Client profile, tenure of contract, value (expenditure by NSW Health), variations, extension options and closure/transition.

Contract Management for Complex Procurement

- 2 An individual contract management plan is mandatory for each of an Entity's complex procurement projects, and is desirable for simple procurement projects that both utilise a Whole of Government or an external Lead Agency contract and have a total value in excess of \$250,000 per annum⁷.

Category Management for Strategic Procurement

- 3 A Category Management Plan is mandatory for each of an Entity's strategic procurement projects, Lead Agency projects and those complex procurement projects that adopted the strategic procurement sourcing approach due to their high risk profile.

Security of Original Contracts

- 4 All original signed contracts along with all their original signed variations and/or original signed extensions are to be registered and kept in a secure location to facilitate audit, and to support any dispute resolution activities, including litigation. Where an Electronic Document Management System is used, the scanned copy of the executed contract is to be electronically filed. Only copies of the contract and its variations and/or extensions should be used in the working environment.

OTHER REQUIREMENTS:

1 Contract Management Program/Plan

A Contract Management Program/Plan should address the following issues:

- disclosure of contract award (mandatory for all contracts valued in excess of \$150,000);
- monitoring compliance with contract conditions (including annual reviews);
- identification of milestones and key deliverables/outcomes;
- roles and responsibilities of participants;
- effective financial management and monitoring;
- monitoring of risks, especially the requirement for available additional supplies in a declared emergency (eg a pandemic) even if need be from alternate sources;

⁷

All dollar values in this manual refer to total costs inclusive of GST

- project performance reporting requirements;
- dispute resolution;
- variations;
- extension(s);
- closure/transition planning procedures, where the function or activity or supplies are likely to continue past the term of the current contract, marking the transfer to a different supply environment, and possibly the transfer of personnel, facilities, stores and intellectual property, etc;
- disposal of unwanted goods; and
- an assessment of benefits realised and lessons learnt.

Client surveys on contractor performance should be conducted annually and a contract review meeting with the prime contractor should occur biannually, with the option of having the Client Reference Group in attendance.

6 Category Management Plans

Category management expands on the above contract management to encompass continuous year-on-year improvement in the benefits of the contract, as well as ensuring that those contracted benefits are realised, through a close and collaborative relationship with the supplier (s) and the clients(s).

The broad principles and techniques required as part of a category management approach are outlined and described below, and should be reflected in the category management plan and its implementation.

Transition In and Out

The Transition In phase involves introducing suppliers and buyers to each other and implementing a transition action plan for an efficient and effective transition into the new contract and out of any existing contract. It is also important to undertake pre-planning for the Transition Out phase of a contract to minimise future disruptions to business activities and unexpected costs.

Continuous improvement

Continuous improvement is a key aspect of category management and involves establishing effective continuous improvement practices for identifying and implementing initiatives to reduce cost and complexity, and improve productivity and buyer amenity.

Benefits tracking

Benefits tracking is undertaken to monitor and ensure that contracted outcomes are being achieved as targeted in the Benefits Realisation Register, and that additional benefits, especially reduction of overall costs, are secured through continuous improvement.

Performance and compliance monitoring

This entails monitoring and ensuring buyer and supplier compliance with the performance requirements of the contract, and monitoring organisational expenditure compliance against the contract mandate.

Client surveys on contractor performance should be conducted at least annually and a contract review meeting with the prime contractor(s) should occur at least biannually, with the option of having the Client Reference Group in attendance.

Data collection, category research and analysis

Category management requires a systematic approach to collecting, collating and analysing supplier and buyer reporting data, as well as undertaking external research and gathering category intelligence (e.g. national and international category trends). It requires an accurate and robust data and knowledge base to be developed to support and inform other category management activities and future procurement strategies.

Benchmarking the contract performance against similar suppliers to the public and private sector should be undertaken.

Communications and relationship management

Structured and open lines of communication and reporting, with a focus on developing supportive and collaborative relationships with the main parties associated with the contract, are essential to enabling category management to be effectively performed.

Collaborative relationships with suppliers and buyers

The potential benefits of a category management approach can only be achieved with the cooperation and support of suppliers and clients (ie contract users). All suppliers and Clients are to:

- undertake all transactions under the contract according to the business rules specified for the contract;
- support, cooperate with and contribute to processes to identify and implement continuous improvement initiatives;
- provide data and feedback when required by the category manager, in the required format; and
- participate in forums and workshops to review contract performance and continuous improvement initiatives.

7 Disposal of Unwanted Goods

The disposal of goods must be aimed at achieving value for money, and the process used must be efficient and effective so as to meet transparency and probity requirements.

Methods used for the disposal of goods are a function of the item's uniqueness, quantity, condition, and monetary value. Such methods include:

- public tender;
- public auction (including use of online commercial systems, eg eBay);
- negotiated sale;
- trade-in;
- sale or transfer to other agencies;
- sale of items to staff;
- donation to charities, community or non profit organisations; and
- writing off the value of goods (recycling, dumping or destruction).

Special consideration should be made for the following types of goods:

- heritage or cultural-interest items: and
- hazardous or polluting substances.

Disposal of motor vehicles is subject to specific NSW Health guidance (see below).

4 Direct Negotiations

Entities may need to negotiate directly with one or more suppliers regarding the award, variation or extension of contracts, the disposal of goods or, in unusual or extreme circumstances, the invitation to tender. In such instances, Entities or Branches are to be mindful of probity issues and are to ensure that:

- a business case supporting the need for direct negotiations to negotiate, or to vary or to extend a contract or to dispose of any unwanted goods is to be developed for approval by the appropriate Delegate;
- the Delegate issues a Negotiating Directive to the Responsible Officer to act as Lead Negotiator, with objectives (e.g. resolving any deficiencies/non-compliances in the bid, accepting alternative offers, seeking additional services, reducing prices, selling unwanted items etc), and thresholds (i.e. not to exceed);
- two or more NSW Health officers are to form the negotiating team (including ideally the appropriate contract/category manager, user representative and possibly a legal adviser);
- a probity adviser be appointed where substantial expenditure may be incurred, or where there is a high risk to the reputation of NSW Health, or where it is sensitive to significant commercial or public issues; and
- the results of the negotiations are documented and presented to the Delegate, within the context of funding approval and/or executive decision.

The Delegate is to seek the approval of the Chief Procurement Officer for any proposal, over the value of \$250,000, to conduct direct negotiations with a single or restricted number of suppliers, without any preceding open stage of tendering. Likewise, the Chief Procurement Officer must approve any procurements that do not intend to obtain three written quotes for projects valued over \$30,000 and up to \$250,000 (or other values as determined by the NSW Procurement Board through its General Purchasing Delegations). See further detailed ICAC guidance on direct negotiations below.

RELATED NSW HEALTH POLICY AND GUIDELINES:

Disclosure of Contract Information (PD2011_011 of 7 Feb 2011):
http://www.health.nsw.gov.au/policies/pd/2011/PD2011_011.html

Procurement and Disposal of Goods and Services Procedures (PD2013_023 of 7 August 2013):

Movable Heritage within NSW Public Health System (PD2010_029 of 20 May 2010):
http://www.health.nsw.gov.au/policies/pd/2010/PD2010_029.html

Motor Vehicle Acquisition and Management Practices (GL2011_010 of 28 Jul 2011 refers):
http://www.health.nsw.gov.au/policies/gl/2011/GL2011_010.html

RELATED TEMPLATES AND FORMS:

Contract Award Details:
http://10.192.65.122/PAS/Documents/contract_award_fillable_3.pdf

LINKS TO RELEVANT EXTERNAL POLICY WEBSITES:

NSW Procurement Guidelines: Disposals, 2007:
http://www.procurepoint.nsw.gov.au/sites/default/files/documents/disposals_guidelines.pdf

NSW Treasury: Asset Disposal Strategic Planning 2006

http://www.treasury.nsw.gov.au/_data/assets/pdf_file/0016/5092/asset_disposal.pdf

ICAC: Direct Negotiations; Guidelines for Managing Risk in Direct Negotiations, 2006:

http://www.icac.nsw.gov.au/publications-and-resources/corruption-prevention?option=com_pubsearch&view=search&task=doSearch&Itemid=3148#results

VERSION CONTROL INFORMATION:

| | |
|---------------------|--|
| Version Number | 1.0 |
| Release Date | May 2013 |
| Further Information | Business and Asset Services |
| Phone | (02) 93919215 |
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OTHER POLICY CONSIDERATIONS

9. MANAGEMENT OF CONSULTANTS AND CONTRACTORS

CONTEXT:

The management of a person or organisation to perform a consultancy function involves undertaking additional reporting by NSW Health (see below). Accordingly, it is important therefore to refer to the following definition of a consultant as compared to a contractor as both parties provide a service.

Consultants

An arrangement where an individual or organisation is engaged temporarily:

- to provide expert analysis and advice which *facilitates decision making*; and
- to perform a specific, specialist one-off task or set of tasks; and
- to conduct a task involving skills or perspectives which would not normally be expected to reside within NSW Health.

Note: To be classified as a consultancy, the arrangement should meet all of the above criteria.

Contractors

In contrast, an arrangement with a contractor is where an individual or organisation is engaged:

- to provide goods, works or services which *implement a decision*;
- to perform all or part of a new or existing ongoing function to assist NSW Health carry out its defined activities and operational functions; and
- to conduct a function involving skills which would normally be expected to reside within the NSW Health but which are not currently available.

For Example:

- a person or organisation engaged to advise on training needs or to design a training program is a consultant; whilst
- a person or an organisation engaged to conduct the actual training is a contractor.

KEY REQUIREMENTS:

1 Whole of Government Panel of Consultants

A Whole of Government panel of pre-qualified consultants has been established under the title "Prequalification Scheme: Performance and Management Services". The Scheme maintains a panel of pre-qualified consultants who provide services in the following areas of expertise:

- Performance Reviews;
- Infrastructure;
- Service Delivery;
- Organisational Capability;
- General Technical Expertise; and
- Information and Communications Technology (ICT) Capital Investment Process Services.

Entities are not obliged to use this panel. Where it is decided not to use the prequalified panel for consultancy work, the existing procurement process applies, ie under \$30,000⁸ one (1) quote, between \$30,000 and \$250,000 three (3) quotes, and over \$250,000 open tender.

⁸ All dollar values in this manual refer to total costs inclusive of GST

However, the Whole of Government panel introduces more flexibility in terms of delegations and administration and should be considered initially (see details at reference below).

2 Corporate Services ICT Consultants

All expenditure for corporate services ICT consultancies must not proceed without prior approval by the Department of Premier and Cabinet (see reference C2009_34 below for details).

3 Whole of Government Panel of Contractor Suppliers

A Whole of Government panel of suppliers that provide contractors has been established under the title "Contingent Workforce Prequalification Scheme". This panel maintains provides contractors experienced in the following areas:

- Administration;
- Finance
- Specialist (e.g. communications, logistics, security, etc);
- Industrial;
- Professional;
- Technical;
- ICT Applications, Databases and Systems;
- Transport;
- Education; and
- Other.

In addition, there is another Prequalification Scheme for ICT Services.

Entities must use these panels wherever applicable and access to these contracts is provided below.

4 Reporting

All consultants and contractors (ie service providers), employed by Entities/Branches under goods and services contracts valued over \$30,000, are to have their performance reported and recorded (see details and guidelines below).

Records of all consultants need to be kept by Entities to meet NSW Treasury requirements to departments and statutory bodies for annual reporting compliance. Entities/Branches are to record, for engagements valued at less than \$50,000, the total number of consultancies and their total cost and, for those engagements valued over \$50,000, the name of the consultant, title of project (identifying the true nature of the work) and actual costs. For both of the above lists of consultancies, Entities/Branches are to record the engagements into set categories (see Treasury guidelines below).

RELATED NSW HEALTH POLICY AND GUIDELINES:

Prequalification Scheme for Engagement of Consultants – Performance & Management Services (IB2009_022):

<http://www.procurepoint.nsw.gov.au/performance-and-management-services-scheme>

Contingent Workforce Prequalification Scheme:

<http://www.procurepoint.nsw.gov.au/before-you-buy/prequalification-schemes-0/contingent-workforce>

Prequalification Scheme: ICT Services:

<http://www.procurepoint.nsw.gov.au/before-you-buy/prequalification-schemes-0/ict-services>

Contractors – Better Practice Guidelines Including Health/Safety in Engagement/Management/Evaluation:

http://www.health.nsw.gov.au/policies/GL/2013/GL2013_011.html

RELATED TEMPLATES AND FORMS:

NSW Health Proforma: Standard Services/Consultancy Contract (under \$200,000):

<http://internal.health.nsw.gov.au/legal/goods.html>

Easy Guide Procurement of Consultants:

http://10.192.65.122/PAS/Documents/Easy%20guide%20engaging%20a%20consultant_DRAFT.pdf

Checklist Hiring of Contractors:

<http://10.192.65.122/PAS/Pages/Checklists.aspx>

Consultants – Engagement/Use of for Human Resource Related Projects – NSW Dept Health (IB2005_010 of 27 Apr 2005):

http://www.health.nsw.gov.au/policies/ib/2005/IB2005_010.html

LINKS TO RELEVANT EXTERNAL POLICY WEBSITES:

NSW Government Policy on Consultants 2004:

<http://www.dpc.nsw.gov.au/announcements/circulars/2004/c2004-17>

Premier's Circular No. 2008 – 34: Prequalification Scheme, Performance and Management Services

http://www.dpc.nsw.gov.au/announcements/circulars/2008/c2008-34_prequalification_scheme_performance_and_management_services

NSW Procurement Guidelines for the Engagement and Use of Consultants and a Consultancy Agreement Template:

<http://www.procurepoint.nsw.gov.au/performance-and-management-services-scheme>

NSW Treasury Guidelines on Annual Report Compliance:

<http://www.treasury.nsw.gov.au/?a=355>

NSW Premier and Cabinet Circular 2009-34: Extension of Approval Process for Expenditure on ICT and Consultancies related to Corporate Services:

http://www.dpc.nsw.gov.au/announcements/circulars/2009/c2009-34_extension_of_approval_process_for_expenditure_on_ict_and_consultancies_related_to_corporate_services

VERSION CONTROL INFORMATION:

| | |
|---------------------|--|
| Version Number | 1.0 |
| Release Date | May 2013 |
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10. CONSIDERATION OF AN UNSOLICITED PROPOSAL

CONTEXT:

The NSW Government often seeks to engage with the private sector in the development and delivery of new infrastructure and services. It encourages the best ideas and solutions from the private sector and a greater level of private sector investment and participation in projects, with rigorous planning and costing to deliver the highest standards of public value as well as confidence to investors and the community (see NSW Government policy guidelines below).

Entities are sometimes in receipt of an unsolicited proposal from industry that exhibits a high degree of innovation and uniqueness that could benefit NSW Health.

These unsolicited proposals generally offer a business process that is quite different to the existing one, utilising a combination of new technology/products and/or initiatives in the provision of services, that has the prospect of meeting NSW Health outcomes with potentially significant benefits in terms of efficacy.

This policy relates to proposals with a total value in excess of \$250,000⁹.

KEY REQUIREMENTS:

1 Initial Evaluation

On receipt of an unsolicited proposal, a preliminary investigation is to be made by the Entity, in consultation with all user representatives (including the Agency for Clinical Innovation where applicable) to ascertain:

- if there are any elements of the proposed business process, i.e. similar products or services, already under contract, or being sourced from industry, or commercially available from other suppliers in the market;
- whether such innovative business processes are in operation elsewhere in Australia or the world, ie the degree of novelty; and
- whether there would be potentially significant benefits that would accrue to NSW Health.

Unsolicited proposals should include one or more of the following elements of uniqueness:

- distinctive intellectual property or innovative ideas/concepts;
- ownership of exclusive assets;
- exceptional software or technology offering significant benefits;
- special financial arrangements; and/or
- unusual and attractive implementation/delivery attributes.

2 Proponent's Business Case

If the initial evaluation merits further consideration, then the private sector proponent is to be invited to develop a business case detailing the proposal's merits, addressing the above elements of uniqueness, clearly identifying ownership of or rights to any related the intellectual property, demonstrating compatibility with the applicable operating environment, and estimating the net efficiencies to be harvested arising from any adoption of the proposal (benefits realised after taking into account any impact/transition costs etc).

This invitation is to be written, endorsed by the appropriate Delegate, and signed by the Entity's Chief Executive or equivalent, stating that such a business case would be considered in good faith but is to be prepared at no cost to NSW Health and with no obligation by NSW Health to proceed with the purchase, adoption, installation or use of the proposal.

Industry can be cautious in investing substantial resources to develop such a business case for a proposal that may not be accepted, especially where the proposal is untested and/or where protection

⁹ All dollar values in this manual represent total costs and are inclusive of GST

of any underlying intellectual property is critical. Accordingly, in assessing the business case it is paramount that its deficiencies be thoroughly assessed as risks, which may in turn be capable of being addressed by atypical mitigation or treatment actions, forming a potential procurement strategy, ie a novel proposal with a real prospect of significant improvement should not necessarily be rejected just because the business case is neither absolutely compelling in all details nor beyond all doubt. Examples of such atypical mitigation or treatment actions include: conducting a trial, seeking greater input from the broader industry, phasing the project with “stop-go” stages, partnering, close monitoring of emerging risks, enhanced project governance (e.g. external membership on the project steering committee), external probity advice, and increased stakeholder consultation.

Entities are to consult with the Ministry of Health (Business and Asset Services Branch) in seeking and considering the proponent’s business case, in conducting the related risk assessment, and in developing any proposed procurement strategy, noting that any resultant strategic or Lead Agency project plans would need to be endorsed by the Procurement Governance Committee.

3 Procurement

Following a positive consideration of the business case, and where the proposal relates solely to an individual Entity, the procurement policies addressing complex and strategic projects apply. Where the proposal has significant potential value to NSW Health beyond the individual Entity, then policies relating to a Lead Agency project apply.

In either case, the next stage in the procurement process would generally involve an invitation to industry for proposals, through an RFP, with the intent of establishing either a panel of suppliers, so as to conduct further staged development of the proposed business process, or a restricted list of tenderers for its prospective supply. The choice between the above approaches will mainly be a function of how best to manage the risks arising from: the degree of transformation proposed to the existing business process; the novelty of the proposed new business process; and options available within the proposed new business process.

This strategy of an RFP is employed principally both to avoid any real or perceived breach of confidentiality and probity, were the proponent’s concepts/solutions/specifications to be or perceived to be used as the sole basis of an RFT’s statement of requirements, as well as to seek other innovative concepts from industry so as to develop further or to determine the ultimate new business process to be sought and its functional requirements. In approaching the market with the RFP, the original proponent is to be provided with the opportunity to participate.

Any strategy to accept an unsolicited proposal by direct negotiations with a single supplier, without any prior market testing, is to be first endorsed by the relevant Chief Executive and the Chief Procurement Officer, then assessed by the Department of Premier and Cabinet (DPC), and finally approved by Government (Cabinet). This requires a three (3) stage process; the first being the submission of the proponent’s business case, its risk assessment/evaluation, and the proposed strategy to the Director General DPC (see Guide for Submission and Assessment below).

In considering whether the above direct negotiations strategy would be viable, the evaluation of the business case is to centre on the assessed risks balanced against the likelihood of significant benefits being derived from one or more of the following:

- clear demonstration that optimal value for money can be achieved;
- sole ownership of or sole rights to intellectual property governing a uniquely valued function;
- exclusive ownership of superior assets, software or technology;
- unmatched timetable of delivery; and/or
- exceptional capability to meet a critical need.

4 Trials

Trials can be used as a proof of concept, aimed at addressing some of the risks identified in the assessment of the business case, especially in verifying the practicability of a single proposal or in comparing the relative value of different proposals or different options within a broader proposal.

If trials are proposed, then a Trial Plan is to be approved by the appropriate Chief Executive, following endorsement by the Chief Procurement Officer, covering such matters as governance arrangements, objectives, assessment criteria, design/methodology, control management arrangements, resources, schedule, reporting requirements, evaluation (internal or external), and a draft Memorandum of Agreement (MOA) between NSW Health and the other party/parties.

Such an MOA should reflect the Trial Plan and include the following:

- governance arrangements, organisational structure, roles and responsibilities;
- objectives and related assessment criteria for their achievement;
- trial design/methodology;
- a clear statement of the proponent's ownership of or rights to intellectual property inherent in the proposal;
- permission to trial the proposal on-site within the applicable operating environment;
- a Deed of Confidentiality between the Entity and the proponent in relation to information provided to or made available by the Entity;
- full compliance to all NSW Health policies concerning clinical trials/protocols, if clinical products/services and/or patients are directly involved;
- agreement on meeting costs, e.g. each party to meet its own costs both direct and indirect;
- insurance and indemnity arrangements;
- acceptance that there is no obligation by the Entity to proceed with the purchase, adoption, installation or use of the proposal after this trial; and
- a statement on available prices and other relevant attributes to be offered as part of the proposal in the event that the Entity, following a successful trial, sought to procure the subject supplies.

RELATED NSW HEALTH POLICY AND GUIDELINES:

Drugs- Highly Specialised Program – Guidelines for Undertaking Clinical Trials (PD2005_078 of 25 Jan 2005 refers):

http://www.health.nsw.gov.au/policies/PD/2005/PD2005_078.html

Clinical Trials: Insurance and Indemnity (PD2011_006 of 25 Jan 2011 refers):

http://www.health.nsw.gov.au/policies/pd/2011/PD2011_006.html

RELATED TEMPLATES AND FORMS:

Nil

LINKS TO RELEVANT EXTERNAL POLICY WEBSITES:

NSW Government Policy: Unsolicited Proposals: Guide for Submission and Assessment:

http://www.nsw.gov.au/sites/default/files/pdf/UnsolicitedProposalsGuidelineAugust2012_GDE_v01.pdf

VERSION CONTROL INFORMATION:

| | |
|---------------------|--|
| Version Number | 1.0 |
| Release Date | May 2013 |
| Further Information | Business and Asset Services |
| Phone | (02) 93919215 |
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11. ENVIRONMENTALLY SUSTAINABLE PROCUREMENT

CONTEXT:

The NSW Government Sustainability Policy, the NSW Health Environmental Sustainability Strategy 2012-2015, and the NSW Health Waste Reduction and Purchasing Policy (WRAPP) provide guidance and targets for NSW Health to become a more environmentally sustainable organisation by:

- Reducing waste;
- Encouraging the efficient use of energy and water;
- Increasing recycling;
- Procuring goods with recycled components;
- Selecting suppliers with environmentally sustainable business practices; and
- Resourcing and procuring efficient appliances.

This policy provides guidance for Entities on how to embed these environmental considerations into procurement decisions for goods and services consistent with the purchasing principles, namely value for money, open and fair competition, accountability, risk management, probity and transparency.

KEY REQUIREMENTS:

1 Environmentally Sustainable Procurement is a Mandatory Consideration

Entities are to purchase goods and services that have reduced impacts on the environment compared with competing products and services that achieve the same function and value for money outcomes.

Entities are required to consider environmental impacts and opportunities during the procurement process with attention given to the early stages of the procurement process when defining business needs, market analysis, tender and quotation strategy, leading to market engagement.

2 Assessing Risk and Influence in Defining Environmentally Sustainable Procurement Priorities

Entities should define their environmentally sustainable procurement priorities based on an assessment of environmental risk and their ability to influence environmentally sustainable outcomes.

Different goods and services have different environmental impacts and opportunities associated with them. The approach to environmentally sustainable procurement should be scaled based on an assessment of the level of adverse environmental impact (risk) and an assessment of the Entity's ability to effect environmental outcomes (influence), including the capacity of suppliers to respond to the specific functional requirements on a value for money basis.

3 Value for Money

Entities are to purchase based on the principle of Value for Money and should therefore consider the total cost of ownership in meeting NSW Health's business needs and procurement budgets. "Hidden" costs, such as energy and water use or disposal must be considered.

A procurement specification and the evaluation of tenders or quotations is to proceed on a total cost of ownership basis or whole of life cost where the environmental values are considered

alongside matters related to acquisition, operation, maintenance, storage, disposal and retirement.

4 Environmentally Sustainable Specifications

Entities should consider where appropriate the inclusion of minimum environmental performance requirements in specifications.

These minimum requirements can be presented as mandatory criteria only if the Entity is confident that the market is able to meet the requirements in line with the value for money analysis. Mandatory criteria must also be based on identifiable technical standards or quantifiable data. Such mandatory requirements should be defined in relation to the impact of the good or service on the environment.

Alternatively, the environmental performance requirements can be noted as desirable criteria and/or suppliers can be required to provide information about their current environmental management practices.

5 Environmentally Sustainable Evaluation Criteria

Entities should consider the inclusion of environmental criteria in the selection of suppliers where appropriate. Where an Entity considers it appropriate to include environmental evaluation criteria in the selection process this needs to be published as part of the quotation or tender process.

Environmental requirements can be defined in relation to performance standards, the impact of the good or service on the environment and/or in relation to supplier's environmental management practices. In setting evaluation criteria, consideration is to be given to alignment with the procurement specifications, policies and the market's capacity to respond.

6 Continuous Improvement

Entities' relationships with suppliers should include the principle of continuous environmental improvement.

Improvements in environmental sustainability and reduced impact of products or services on the environment can be achieved over time as a result of improved mutual understanding of desired outcomes and opportunities between departments and suppliers. Contracts for the purchase of products and services over a multi-year period should include the principle of continuous environmental improvement.

Environmental impact should form part of any surveys of Clients on Contractor performance and the suitability of supplies.

7 Disposal

When considering the disposal of goods, Entities should explore the prospect of recycling or transferring such goods to another Entity or agency as a priority, in accordance with disposal of goods policy. Other options open would be to return them to the manufacturer wherever practicable or to sell them. Alternately, if the unwanted items have some value to a charity or a community/non-for-profit organisation, then such items can be removed by these organisations and their ownership transferred, subject to a written declaration from such an organisation attesting to no cost and no obligation/liability to NSW Health, now or in the future.

OTHER REQUIREMENT:

Nil

RELATED NSW HEALTH POLICY AND GUIDELINES:

NSW Health Environmental Sustainability Strategy 2012-2015:

http://www.health.nsw.gov.au/pubs/2012/pdf/env_sus_strat201215.pdf

Waste Reduction and Purchasing Policy (PD2011_066 of 17 Oct 2011):

http://www.health.nsw.gov.au/policies/pd/2011/PD2011_066.html

RELATED TEMPLATES AND FORMS:

Nil

LINKS TO RELEVANT EXTERNAL POLICY WEBSITES:

NSW Sustainability Policy:

<http://www.environment.nsw.gov.au/resources/government/08453SustainabilityPolicy.pdf>

NSW Procurement Guidelines: Environmental Management:

http://www.procurepoint.nsw.gov.au/sites/default/files/documents/guidelines_environmental_management.pdf

VERSION CONTROL INFORMATION:

| | |
|---------------------|--|
| Version Number | 1.0 |
| Release Date | May 2013 |
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12. REGIONAL SOURCING

CONTEXT:

Government purchasing can have a positive impact on local communities, encouraging regional and local firms to grow and innovate, and to generate employment opportunities.

The NSW Government seeks to maximise opportunities for local suppliers to sell to government and thus Entities should give consideration to regional sourcing as a factor in the procurement planning stage.

KEY REQUIREMENTS:

1 Maintaining Core Procurement Principles for all Procurement Activities

Value for money determined on a whole of procurement life cycle basis remains the primary criterion in the selection of suppliers.

Entities must give consideration to regional suppliers outside of the greater Sydney metropolitan area where they can offer the same or better value for money.

Normal procurement planning, tendering and contract management apply.

2 Regional Sourcing and Whole of Government Contracts

Entities are not bound to source requirements under \$5,000¹⁰ from a Whole of Government Contract where services are delivered outside of the greater Sydney metropolitan area. However the Whole of Government Contract must be used where it specifically caters for regional supply i.e. the contract provides a supplier or outlet in the regional area or the contract conditions note a regional supply obligation.

3 Maximising Local Supplier Participation

Entities are to promote opportunities for regional suppliers in government procurement by:

- providing sufficient notice of government opportunities for regional suppliers;
- examining opportunities for regional suppliers to join in supply chain relationships;
- using existing organisations such as the Industrial Capability Network (ICN) and electronic catalogues to identify local industry suppliers;
- encouraging regional suppliers to participate in electronic commerce initiatives, such as the ICN;
- examining opportunities for regional suppliers when specifying requirements; and
- specifying evaluation criteria for regional purchasing requirements, considering criteria that accurately reflect relevant considerations such as transportation, commissioning and support costs.

4 Small and Medium Enterprises Policy Framework

The NSW Government's Small and Medium Enterprises (SME) Policy Framework specifically encourages opportunities for Australian and New Zealand (ANZ) Small to Medium Enterprises (SME) to supply goods and services¹¹.

¹⁰ All dollar values in this manual refer to total costs inclusive of GST

¹¹ An SME is defined as having a workforce of no more than 200 employees

The framework includes:

- Planning for SME Engagement:
 - all projects valued over \$250,000 (complex procurement) are to include an SME Opportunity Statement in their procurement plans; and
 - all projects valued over \$10m (strategic procurement) are to include a SME Participation Plan;

RELATED NSW HEALTH POLICY AND GUIDELINES:

Nil

RELATED TEMPLATES AND FORMS:

Nil

LINKS TO RELEVANT EXTERNAL POLICY WEBSITES:

NSW Procurement Small and Medium Enterprises Policy Framework 2013:

<http://www.procurepoint.nsw.gov.au/procurement-reform/about-nsw-procurement-reform/small-and-medium-enterprises-policy-framework>

Industry Capability Network:

<http://www.icnsw.org.au/>

VERSION CONTROL INFORMATION:

| | |
|---------------------|--|
| Version Number | 1.0 |
| Release Date | May 2013 |
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13. AUSTRALIA AND NEW ZEALAND GOVERNMENT PROCUREMENT AGREEMENT (ANZGPA)

CONTEXT:

NSW is party to the Australia and New Zealand Government Procurement Agreement (ANZGPA) that enables suppliers from all Australian and New Zealand jurisdictions to compete equally for government contracts.

The aims of the agreement are to:

- enable suppliers from all jurisdictions to compete equally for government contracts and particularly, to forbid practices which are biased against, discriminate against or deny access or opportunity to any Australian or New Zealand ("ANZ") supplier; and
- encourage consistency in performance standards and specifications, and simplicity and consistency in purchasing policies, practices and procedures.

KEY REQUIREMENT:

Entities are to comply with the conditions of the ANZGPA, namely to provide equal opportunity to ANZ suppliers to bid for quotes and tenders, and be evaluated fairly.

OTHER REQUIREMENTS:

All parties agree to use value for money as the primary determinant in purchasing decisions.

Particular exemptions to the ANZGPA Agreement if endorsed by the Delegate may be sought from the Ministry of Health (Chief Procurement Officer).

RELATED NSW HEALTH POLICY AND GUIDELINES:

Nil

RELATED TEMPLATES AND FORMS:

Nil

LINKS TO RELEVANT EXTERNAL POLICY WEBSITES:

Australia New Zealand Government Procurement Agreement (ANZGPA):
http://www.dfat.gov.au/fta/anzcerta/downloads/anzcerta_1997revised_npa.pdf

Premier's Memorandum on ANZGPA:
http://www.dpc.nsw.gov.au/announcements/ministerial_memoranda/1998/m1998-07

VERSION CONTROL INFORMATION:

| | |
|---------------------|--|
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14. AUSTRALIA – UNITED STATES FREE TRADE AGREEMENT (AUSFTA) GOVERNMENT PROCUREMENT

CONTEXT:

NSW is party to the Australia – United States Free Trade Agreement (AUSFTA) that has mutual obligations on each party in relation to government procurement.

These mutual obligations require each party to adhere to the principle of national treatment and non-discrimination.

A procurement agency of a party may not:

- treat a locally established supplier less favourably than other locally established suppliers on the basis of degree of foreign affiliation or ownership, or
- discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other party.

KEY REQUIREMENT:

Entities are to adhere to the requirements of the AUSFTA, namely to provide equal opportunity to US suppliers for the purchase of goods and services when valued in excess of A\$675,000¹², including notification of tenders, tender evaluation, etc.

OTHER REQUIREMENT:

Nil

RELATED NSW HEALTH POLICY AND GUIDELINES:

Nil

RELATED TEMPLATES AND FORMS:

Nil

LINKS TO RELEVANT POLICY WEBSITES:

AUSFTA: Goods and Services Procurement to Governments:
http://www.dfat.gov.au/fta/ausfta/final-text/chapter_15.html

VERSION CONTROL INFORMATION:

| | |
|---------------------|--|
| Version Number | 1.0 |
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¹²

All dollar values in this manual refer to total costs inclusive of GST

15. PROCUREMENT ACTION IN CASES OF DUMPING

CONTEXT:

When an exporter sells a product to Australia at a lower price than the price charged in its home market, that exporter may be engaged in a form of price differentiation known as “dumping”. Anti-dumping remedies are available where the dumping causes or threatens to cause material injury to an Australian industry. The term “dumping” can refer to a subsidy as well as the actual dumping of a good.

The Australian Customs Service has sole responsibility for investigating and reporting dumping matters to the Commonwealth Government. These investigations cover applications for new anti-dumping and countervailing measures; reviews or revocations of existing measures; dumping duty assessments; and applications for continuation of existing measures past a five-year sunset period.

KEY REQUIREMENTS:

1 Standard Tender Terms and Conditions

All NSW Health tender documents must note that procurement action may be suspended in relation to the consideration of a tender submission or entering into a contract with a supplier that is offering goods subject to an Australian Customs Dumping Notice.

2 Standard Contract Terms and Conditions

The terms and conditions of all NSW Health contracts are to note that the Entity may suspend the agreement where the supplier is providing goods subject to an Australian Customs Dumping Notice.

3 Notice

Where there is a significant price difference between local and overseas sourced products, Entities must refer to the Australian Customs Services Notices.

OTHER REQUIREMENT:

Nil

RELATED NEW HEALTH POLICY AND GUIDELINES:

Nil

RELATED TEMPLATES AND FORMS:

Nil

LINKS TO RELEVANT EXTERNAL POLICY WEBSITES:

Australian Customs Service: www.customs.gov.au

VERSION CONTROL INFORMATION:

| | |
|---------------------|--|
| Version Number | 1.0 |
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16. ANNUAL PROCUREMENT REPORTING

CONTEXT:

Under the requirements of the Board's Agency Accreditation Scheme (AAS) for the procurement of goods and services, NSW Health is required to submit quarterly and annual procurement reports, as a condition of retaining its status as an advanced procurement agency and its related delegations. As a consequence, Entities are required to report their procurement activities, in accordance to AAS requirements, either to PAS (Ministry entities) or HealthShare NSW (non-Ministry entities) for incorporation into a NSW Health report.

KEY REQUIREMENTS:

- Quarterly Reports on programs of work and improvement progress by end of first week of Apr, Jul, and Oct, and by end of third week of Jan; and
- An Annual Report by no later than 1 August each year, covering the period to 30 June of that year.

The form of these reports is prescribed by the Ministry of Health with the templates provided through the Procurement Portal.

RELATED NSW HEALTH POLICY AND GUIDELINES:

Nil

RELATED TEMPLATES, FORMS AND TOOLS:

Procurement Portal:

<http://10.192.65.122/pas/>

LINKS TO RELEVANT EXTERNAL POLICY WEBSITES:

NSW Agency Accreditation Scheme for the Procurement of Goods and Services:

<http://www.procurepoint.nsw.gov.au/policy-and-reform/nsw-procurement-reform/information-agencies/agency-accreditation-scheme>

VERSION CONTROL INFORMATION:

| | |
|---------------------|--|
| Version Number | 1.0 |
| Release Date | May 2013 |
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