

12 Procurement & Asset Management

12.1 Procurement of Goods and Services

12.1.1 Goal

The primary purpose of 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 goal are:

- 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;
- 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 whole of life 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, aboriginal businesses and disability enterprises participation, is to be realised.

12.1.2 Legal Framework

The NSW Procurement Board (that replaced the State Contracts Control Board) is responsible for overseeing the procurement and disposal of goods and services by the NSW public sector service, under the *Government Sector Employment Act 2002* and Regulation 2014. 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.

On 1 December 2011, the former State Contracts Control Board delegated to the Health Administration Corporation (HAC), under the Agency Accreditation Scheme for Goods and Services Procurement, level 2A accreditation for three years, commencing 1 January 2012.

Under this level 2A accreditation, HAC can undertake the procurement of goods and services, outside of whole of government contracts, between \$250,000 and \$30m without reference to the NSW Procurement Board.

The Ministry of Health and HealthShare NSW are the accredited entities within NSW Health as “advanced procurement agencies”, and the Secretary, NSW Health has subsequently granted appropriate delegations to undertake the procurement of goods and services not available under Whole of Government contracts up to the value of \$30m. All other entities within NSW Health have a delegation for such procurement of up to \$250,000⁴.

12.1.3 Governance

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.

A state wide Procurement Governance Committee is convened by the Chief Procurement Officer with Terms of Reference to develop goods and services procurement policy and regulation; and to coordinate with HealthShare NSW to oversee:

- procurement policy compliance,
- NSW Health’s procurement savings program,
- the development of NSW Health’s procurement systems, tools and practices to improve procurement effectiveness, and
- the planning and evaluation stages of whole of government or cross Agency projects where Health is appointed as procurement lead.

Roles for Local Health Entities

The Chief Executive of the Entity is responsible and accountable for the procurement of goods and services in accordance with the Secretary, NSW Health Instrument of Delegations.

A Procurement Advisory Board is to be established by the Chief Executive to provide assurance that governance issues have been appropriately managed over all stages of all procurement projects conducted by the Entity.

A Responsible Officer is to be appointed by the Chief Executive to manage all stages of a procurement project (with the support of the appropriate HealthShare NSW Service Centre) and, for projects valued over \$250,000 or which attract high risk, to establish a Project Steering Committee including HealthShare NSW or the Ministry procurement resources to provide project assurance.

Roles of Ministry and HealthShare NSW

The Ministry Chief Procurement Officer is responsible for coordinating policy and regulation of the procurement of goods and services across NSW Health. This role is supported by the Procurement Advisory Service which is available to provide procurement advice, particularly in the areas of policy and probity, and ongoing general advice primarily to Ministry Branches, but also to other Entities on the planning, market document preparation, and evaluation stages.

The Procurement Portal on NSW Health’s intranet provides policy, procedures, templates and guidance on the procurement of goods and services, as well as links to the delegations manuals.

The role of HealthShare NSW is to support Local Entities in procurement transactions and the ensure appropriate procurement governance structures, processes and practises are in place; and to participate on Governance

4 In this document the term “Entity” means Local Health Districts, Board Governed Statutory Health Corporations, chief executive Governed Statutory Health Corporations, Specialty Network Governed Statutory Health Corporations, Affiliated Health Organisations and NSW Ambulance Service.

Committees where appropriate. Under the terms of procurement accreditation as outlined above HealthShare NSW is to support all procurements over \$250,000 by providing QA of relevant documentation and participation throughout the carriage of the tender process.

Also as noted above the Ministry is also accredited for specific and specialist procurement should this be deemed appropriate at the direction of the Chief Procurement Officer.

12.1.4 Value for Money

Value for Money is a central objective in using public funds to procure goods and services.

It 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.

Whilst competition is a major procurement strategy to achieve this objective, other strategies are also acceptable as long as value for money can be demonstrated.

12.1.5 Risk Management

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.

Any issues of significant procurement risk should be referred to the Chief Procurement Officer and or the State-wide Procurement Governance Committee.

12.1.6 Transparency, Accountability and Fairness

Consistency and transparency of process

Each commercial engagement must be conducted in a transparent and fair manner, consistent with the policies and procedures set out on the Procurement Portal and including 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. To assist transparency, and in accordance with the Government Information (Public Access) Act 2009 the details of all contracts with the private sector valued in excess of \$150,000 are to be publicly disclosed.

Accountability

The Chief Executive remains solely accountable for all procurement projects for which they are responsible, regardless of the devolution of their authority.

The Chief Executive 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 the procurement.

Probity advisors can be sourced internally from the Ministry of Health or HealthShare NSW and from other agencies provided they have demonstrated experience in procurement policy and practices.

Project Specific Steering Committee/s also to be established to oversee the procurement process and advise the Responsible Officer on strategic and operational issues as well as procurement policy requirements, governance aspects and procedural matters for projects valued over \$250,000 or that attract high risk.

The Chief Executive is to establish a local procurement advisory board to review and approve all proposed procurement activities to provide assurance they align with local strategic objectives.

Fairness

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.

Where relevant, the Entity should specify a process that ensures the appropriate management of information by both the Entity and the private sector. The process should ensure the security and confidentiality of intellectual property and proprietary information, to the extent allowed by law and government policy. The Entity must ensure that processes are adopted to identify, declare and address any actual or perceived conflict of interest throughout the procurement process.

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.

Probity

Where the risk and complexity associated with a procurement process is considered high the option of appointing a probity adviser is strongly recommended.

Probity advisors can be sourced internally from the Ministry of Health or HealthShare NSW and from other agencies provided they have demonstrated experience in procurement policy and practices.

External independent probity practitioners should be sourced from the NSW Government's Prequalification Scheme for Consultants: Performance and Management Services.

12.1.7 Whole of Government Context

Strategic Commissioning

The NSW Procurement Board has endorsed the concept of Strategic Commissioning based around strategic needs assessment, selection and prioritisation of program objectives, and the exploration of alternative models for service provision.

The NSW Government Goods and Service Procurement Policy Framework includes the following description of strategic commissioning within the market engagement methods and advises that strategic commissioning is a key activity to be considered within the Stage 1 – Needs Analysis of the procurement process.

“Strategic commissioning is broader than contracting, purchasing or procuring. It involves designing commissioning systems by which government can access, deepen and develop supply markets for public services. These supply markets range across public, private and not for profit organisations. Effective commissioning arrangements, and choice of procurement objectives, contracting models, and service delivery methods.”

Competition

Entities are to encourage competition between suppliers and 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 and give value to a supplier’s evidence of government or equivalent experience if relevant.

Environmental Sustainability

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, before leading to market engagement.

Australian Disability Enterprises (ADE)

Australian Disability Enterprises (ADEs) are commercial businesses that provide employment for people with a disability. They have been included in a register through an order made by the Minister for Disability Services. The register is maintained by National Disability Services (NDS) and details of the businesses on the register can be found on the National Disability Services website.

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

Purchasing from Aboriginal Businesses

Entities and Branches may procure goods and services from a recognised Aboriginal business up to \$150,000, without seeking alternate quotes/tenders, and are exempt from existing Whole of Government or Health contracts, as long as value for money can be documented.

A 'recognised Aboriginal business' is one which:

- is certified as an Indigenous business by Supply Nation (formerly the Australian Indigenous Minority Supplier Council), or
- is certified as an Indigenous business by the NSW Indigenous Chamber of Commerce, or
- meets the definition of an Indigenous business under the definition used in the Australian Government's Indigenous Opportunity Policy (the Indigenous Opportunities Policy currently defines an Indigenous business as a business that has an ABN and 51 per cent Indigenous ownership).

Regional Purchasing

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.

12.1.8 Training and Development

Training in procurement is provided through general courses provided by the Institute of Public Administration Australia (NSW Division) as well as Health specific training in procurement and risk management principles, and contract management delivered in-house.

All Health staff have a responsibility to procure goods and services in support of their specific work function, and develop procurement competence through experience, supported by guidance provided at the Procurement Portal on NSW Health's intranet as well as from the Procurement Advisory Service or HealthShare NSW.

12.1.9 References

Legal Framework

Public Sector Employment and Management Act 2002:

http://www.austlii.edu.au/au/legis/nsw/consol_act/pseama2002379/

Public Sector Employment and Management Regulations 2009:

http://www.austlii.edu.au/au/legis/nt/consol_reg/pseamr488/

Government Information (Public Access) Act 2009:

<http://www.legislation.nsw.gov.au/maintop/view/inforce/act+52+2009+cd+0+N>

Policy Framework

NSW Procurement:

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

NSW Health:

<http://procurementportal.moh.health.nsw.gov.au/Pages/default.aspx>