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General FAQs

What is considered an SME and what is considered a small business?

For this policy, a Small and Medium Enterprise (SME) is an Australian or New Zealand based enterprise, with fewer than 200 Full Time Equivalent (FTE) employees.

A small business is defined as an enterprise with 1-19 FTEs including sole traders and start-ups. A medium business is defined as an enterprise with 20-199 FTEs.

What is the SME and Regional Procurement Policy?

The SME and Regional Procurement Policy is a whole-of-government procurement policy, aimed at increasing the participation of SMEs and regional businesses in government procurement of goods and services, excluding construction procurement, through a range of initiatives.

The SME and Regional Procurement Policy is a component of the broader NSW Government Procurement Policy Framework.

When does the SME and Regional Procurement Policy come into effect?

The SME and Regional Procurement Policy is mandatory from 1 February 2019.

If a procurement has already commenced or an approval process has been approved prior to 1 February 2019 the requirements and permissions in the policy will not apply.

Which agencies must comply with the policy?

The SME and Regional Procurement Policy applies to all NSW government agencies as defined under s.162 of the Public Works and Procurement Act 1912. It excludes state owned corporations and local councils.
What type of procurement can the SME and Regional Procurement Policy be applied to?

The SME and Regional Procurement Policy applies to the procurement of any goods and services by all NSW Government agencies, as defined in Part 11 s.162 of the Public Works and Procurement Act 1912, excluding construction. This includes ICT including hardware, software and telecommunications, office supplies, fleet, travel, human services, professional services, utilities and pharmaceuticals and other health-related goods and services.

There is no associated revenue limit for an SME within this policy.

Are the value thresholds in the SME and Regional Procurement Policy exclusive or inclusive of Goods and Services Tax (GST)?

All values are exclusive of GST.

Supplier FAQs

How will the SME and Regional Procurement Policy benefit SMEs?

The policy aims to deliver a broader range of opportunities for SMEs to supply goods and services to government across both low and high value procurements.

What can SMEs do to be considered for NSW Government contracts?

SMEs should:

- Identify and engage with NSW Government agencies that may require the types of goods or services provided by their business.
- Apply for relevant prequalification schemes for goods and services provided by their business.
- Respond to agencies' procurement opportunities by providing proposals that meet agency needs and are offered on competitive terms.
- Attend tender briefings and other agency information sessions to learn more about current and upcoming procurement opportunities. The policy requires agencies to provide pre-tender briefings to SMEs if requested, and no other briefings have been arranged.
- Seek feedback from agencies if a business proposal is not accepted.

What are Annual Procurement Plans?

Annual Procurement Plans are published by agencies on eTendering. They outline the agency’s procurement activities over the next 12 or 24 months and provide advance notice of large contracts.
Annual Procurement Plans provide information for suppliers on upcoming procurement opportunities, when they are expected to be released to market, and who to contact for further information.

Why should I register on eTendering?

- To be notified of current and proposed Requests for Tender
- To be notified of updates to Annual Procurement Plans
- To add an Annual Procurement Plan to your watch list
- To respond to an advertised Request for Tender
- To apply to be part of a prequalification scheme

What will I need to include in my tender response for larger procurements?

For procurements above $3 million, suppliers must demonstrate how they will support economic, ethical, social and environmental factors, including SME participation, by responding to a new SME and Sustainability Criteria.

A response to the SME participation aspect of the criteria may include confirming your SME status, or providing commitments to collaborate with SMEs to help provide the goods and services for the contract, such as subcontracting to SMEs. The tender documentation for each procurement will provide more detail on this requirement.

Other factors that might be included in the SME and Sustainability Criteria could address additional economic, ethical, social or environmental priorities such as:

- how you will monitor or address risks of modern slavery in the supply chain for goods or services on the contract
- whether you will engage with Aboriginal owned businesses or Australian Disability Enterprises to help deliver the contract
- requiring the products supplied under the contract to meet minimum efficiency ratings for electricity or water use, or air emissions standards
- seeking commitments to use recycled content or material in goods supplied under the contract, or that you will reuse, repurpose or recycle products or materials at the end of the contract.

If I am successful, what are my reporting obligations?

For contracts with a value greater than $3 million, lead suppliers must report monthly progress against their SME participation commitments made through the tendering process.

Lead suppliers must provide SME subcontractor information including:

- contractor business name
▪ ABN
▪ services provided
▪ spend to date
▪ contract value percentage

An Interim Report Tool is being used in place of the online reporting portal which is being developed.

Suppliers should submit the Interim Reporting Tool to the agency contract manager at the end of each month.

Other commitments made in response to the SME and Sustainability Criteria will be monitored by agencies through regular contract management activities.

How can I provide feedback on my experience with government procurement processes?

Feedback from SME suppliers will allow us to continue to improve and make government procurement processes easier to access. SMEs can provide feedback on their experience with government procurement processes through a new SME Feedback Tool on eTendering.

If you have a specific complaint, NSW Government agencies are responsible for resolving complaints concerning their procurement actions at the appropriate agency level, usually commencing at the area undertaking the procurement. This should be managed by following the information provided in the Procurement Complaints section on ProcurePoint.

Where can I get advice on winning government business?

Procurement advice service

Business Connect aims to help small businesses start up, to create jobs, to help established small to medium-sized businesses become sustainable, and to increase business confidence across NSW.

Advisors work with SMEs and host workshops to build capability, skills, provide advice on tenders and processes, introduce businesses to supplier lists and report back to the NSW Government on the SME experience.

Business Connect services are offered by independent experienced service providers across the state.

Visit the Business Connect website, call 1300 134 359 or email connect@treasury.nsw.gov.au to access the service.
Industry Capability Network

The Industry Capability Network NSW provides supply chain services that bridge the information gap between buyers and sellers.

ICN NSW works with local suppliers and project managers throughout the procurement process to connect businesses to project opportunities and promote local industry capability and capacity. It has offices in the Murray Riverina, Hunter/Northern NSW, Central West, South East NSW and the Sydney Metropolitan area.

Visit the ICN website, call 02 99273100 or email info@icnnsw.org.au to access the service.

How does NSW Government support small businesses involved in commercial disputes?

WeAssist is a dispute resolution and advice service provided by the NSW Small Business Commissioner. They can help you resolve commercial disputes through negotiation and mediation, rather than going to court. The service can assist with a range of issues and parties including other small businesses, big businesses, local government and NSW government agencies.

Visit the WeAssist website, call 1300 795 534 or email we.assist@smallbusiness.nsw.gov.au to access the service.

NSW Government agency - FAQs

What do buyers have to comply with in the Policy?

▪ Buyers must first consider purchasing from a regional supplier whenever a direct procurement is undertaken in a regional area, up to $250, 000. If the procurement is not in a regional area, then the agency must first consider purchasing from an SME.

▪ For procurements over $3 million over the life of the arrangement, including single supplier standing offers, agencies must allocate a minimum 15 per cent of the non-price evaluation criteria to the SME and Sustainability Criteria. This criteria assesses how the tenderer will support the government’s economic, ethical, environmental and/or social priorities through the contract, consistent with relevant exemptions in International Procurement Agreements. A non-price weighting of at least 10 per cent (i.e. two thirds of the 15 per cent weighting) must be allocated to SME participation.

▪ Agencies must incorporate supplier SME and sustainability commitments into agreements and monitor compliance as part of contract management activities.

▪ An Interim Report Tool is being used in place of the online reporting portal which is being developed to simplify the supplier reporting process.
• Agencies must, wherever feasible, set a limit for the length of tender responses when seeking more than one quote, i.e. provide guidance on how long tender responses should be such as a page limit.

• Agencies must minimise tender and contract requirements wherever possible, such as insurance levels or technical requirements. You must ensure the minimum possible levels of public liability and professional indemnity insurance are imposed on SMEs, considering the risk profile of the engagement. Your agency’s risk manager may be able to help determine these levels.

**What is the simplest way to purchase from an SME?**

• Buyers may purchase goods or services valued up to $50,000 directly from a small business, even where these are available on a whole-of-government arrangement. Buyers are encouraged to purchase from local small businesses.

• Buyers may purchase goods or services valued up to $10,000 from any supplier, even where these are available on a whole-of-government arrangement.

**How can I try a new idea or solution?**

• Accredited agencies may directly engage an SME on a short-term contract valued up to $1 million to do proof-of-concept testing or outcomes-based trials. Buyers may use any appropriate procurement method, including direct negotiation, to award a contract following a successful test or trial, subject to their agency’s procurement rules and the [NSW Government Procurement Policy Framework](#).

**Does the SME and Regional Procurement Policy replace an existing policy?**

The SME and Regional Procurement Policy replaces the SME Policy Framework.

**Will the SME and Regional Procurement Policy be retrospectively applied to contracts that commenced prior to 1 February 2019?**

No. The SME and Regional Procurement Policy applies to all new contracts from 1 February 2019 onwards.

If a procurement has already commenced or an approval process has been approved prior to 1 February 2019 the requirements and permissions in the policy will not apply.
How do agencies meet the SME or Regional First requirement?

Agencies must first consider purchasing from a regional supplier for procurement in a regional area, whenever direct procurement is permitted, where multiple quotes are not required, up to a value of $250,000. If the procurement is not in a regional area, then the agency must first consider purchasing from an SME. This initiative applies to all direct procurements, including from prequalification schemes, standing offers, whole of government contracts and panels.

The thresholds for direct procurements from prequalification schemes and panels vary depending on the scheme or panel. Agencies may also apply extra restrictions. Where the scheme, panel or agency rules set a threshold for direct procurements that is lower than $250,000, the SME or Regional First requirement only applies up to the lower threshold.

For example, where a scheme allows direct procurement up to $150,000, in this instance an agency must first consider purchasing from an SME or regional supplier up to $150,000 - not $250,000.

What qualifies as a ‘direct procurement’ under the SME or Regional First requirement?

A direct procurement is any procurement that is purchased straight from a supplier without seeking multiple quotes or running a tender. It includes procurements where only one quote is sought from a single supplier, or that are directly negotiated with a single supplier. Depending on your agency’s rules, the value of direct procurements may vary.

Direct procurements include:

- Any procurement using the $10,000 general procurement exemption
- Any procurement using the $50,000 small business exemption
- Any procurement from a prequalification scheme where only one quote is required, up to a value of $250,000. The threshold for one quote procurements from schemes vary depending on scheme and your agency’s rules. The SME or Regional First requirement only applies up to the threshold for direct procurements under scheme or agency rules.
- Any procurement from a whole of government contract or other panel that is made directly with a supplier using the contract catalogue or price list, or where only one quote is sought from a panel supplier, up to a value of $250,000. If the panel rules or your agency require you to seek multiple quotes at a lower threshold, for example $150,000, the SME or Regional First requirement only applies up to that lower threshold.

The SME or Regional First requirement does not apply to any direct procurements valued over $250,000.
Do purchasing exemptions apply to small and medium businesses or only small businesses?

Agencies may purchase goods or services up to a value of $50,000 directly from a small business, even where these are available on a whole of government arrangement. Small businesses are a subset of SMEs, being an enterprise with fewer than 20 FTEs.

Agencies may purchase goods or services up to a value of $10,000 from any supplier, even where these are available on a whole of government arrangement.

How is the SME and sustainability criteria to be applied?

For engagements that are expected to exceed $3 million over the life of the procurement arrangement, and where the supplier or suppliers are selected using a competitive process, agencies must assign a minimum 15 per cent of the non-price evaluation criteria which considers how the tenderer will support the government’s economic, ethical, environmental and/or social priorities in the delivery of the contract.

A non-price weighting of at least 10 per cent (i.e. two thirds of the total 15 per cent weighting) must be allocated to SME participation.

The minimum weighting is applied to the non-price evaluation criteria.

For example, with a 50 price:50 non-price weighting:
The following table shows the weightings across a range of price: non-price ratios:

<table>
<thead>
<tr>
<th>Price</th>
<th>Non-Price</th>
<th>Other non-price</th>
<th>Total sustainability criteria</th>
<th>SME commitment</th>
<th>Sustainability commitment</th>
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</thead>
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<tr>
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<td>10</td>
<td>8.5</td>
<td>1.5</td>
<td>1</td>
<td>0.5</td>
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<td>76.5</td>
<td>13.5</td>
<td>9</td>
<td>4.5</td>
</tr>
</tbody>
</table>

What priorities can I consider for the 15% sustainability commitment?

The Premier has announced the government’s key policy priorities for this term of government:

- A strong economy
- Highest quality education
- Well connected communities with quality local environments
- Putting the customer at the centre of everything we do
• Breaking the cycle of disadvantage.

  The government has also made commitments to use government procurement to support:

• Aboriginal owned businesses and employment of Aboriginal people (Aboriginal Procurement Policy)
• Organisations that employ people with a disability (procurement exemptions for disability employment organisations in the *Public Works and Procurement Regulation 2019*)
• Regional employment
• Resource efficiency and waste reduction (Government Resource Efficiency Policy)
• Address risks of modern slavery in government procurement supply chains (NSW Modern Slavery Act 2018).

  Individual agencies or clusters also have internal priorities that could be addressed through the sustainability commitment.

  Examples of ways to use the 15% sustainability commitment to support these priorities include asking suppliers:

• how they will use Aboriginal owned businesses in the contract supply chain
• if they employ Aboriginal people, or will commit to employing Aboriginal people to help deliver the contract
• if they have an Aboriginal Reconciliation Action Plan
• if they have a Corporate Responsibility Action Plan.
• how they will use Australian Disability Enterprises in the contract supply chain
• if they will commit to using regional SMEs or employ people from the local area to support delivery of the contract
• how they address risks of modern slavery in their supply chains, or specifically addressing modern slavery risks in the supply chain for the contract
• to use repurposed or recycled materials in the contract supply chain
• to recycle goods or components at the end of the contract or at then end of the life of the product
• how they reduce waste in their supply chains, such as recycling or repurposing programs.

  This is not an exhaustive list, and the nature and scope of the contract will affect the priorities you choose.
How do the International Procurement Agreements (IPAs) and the Enforceable Procurement Provisions (EPP) Direction affect the SME and Regional Procurement Policy?

The IPAs and EPP Direction include exemptions for:

- preferences that benefit SMEs
- measures for the economic and social advancement of Indigenous people
- measures for the protection of public morals, order or safety
- measures for the protection of human, animal or plant life or health
- measures for the protection of intellectual property
- measures relating to the goods or services of a person with disabilities, or of philanthropic or not-for-profit institutions.

The SME and Regional Procurement Policy has been reviewed to ensure it complies with the IPAs and EPP Direction. The initiatives in the policy either fall within the exemptions or only apply to procurements below the thresholds at which the IPAs apply.

When designing the SME and Sustainability Criteria for procurements covered by the IPAs, agencies should be mindful of the IPAs and EPP Direction and ensure any requirements align with the requirements or exemptions. You must ensure the criteria is applied fairly and equitably to all prospective suppliers. Your agency’s procurement team, legal team or NSW Procurement can provide further advice.

What reporting is required under the SME and sustainability criteria for activities over $3 million?

Agencies must ensure suppliers are made aware of their obligations under this policy as early as possible in the procurement process.

Agencies must incorporate supplier SME and sustainability commitments into agreements and monitor compliance as part of contract management activities.

For contracts with a value greater than $3 million, ensure lead suppliers provide monthly reports on their progress against their SME participation commitment, via the Interim Report Tool to capture indirect spend.

Suppliers should submit their sheet to the agency contract manager at the end of each month.

The agency contract manager should then submit the report to NSWP.Policy@treasury.nsw.gov.au with the email subject heading: APP/SME Reporting - (month/year) - (contract name) - (agency name)
Direct spend and other commitments made in response to the SME and Sustainability Criteria will be monitored by agencies through regular contract management activities.

An online reporting portal is being developed to replace Interim Report Tool.

**How should we manage procurements over $3m where the SME and sustainability criteria may be challenging to apply?**

The assessment against these criteria could include SMEs responding to the tender, or non-SMEs responding to the tender and demonstrating their commitment to support SME participation in the contract.

If suppliers advise that there are no opportunities for SME participation in the contract, they could still respond by demonstrating how they support SME participation more generally in their business operations.

**How can we assist SMEs to win work with government?**

You must provide pre and post tender briefings when reasonably requested by SMEs and regional suppliers, to clarify requirements and provide feedback on unsuccessful bids.

Agencies should ensure procurement documents are written in plain English and minimise insurance and technical requirements as much as possible.

Be mindful that SME’s are often responding to tenders outside of their usual day to day commitments. Agencies should consider complexities in the tender requirements and ensure response times are appropriate.

Providing advance notice of procurement opportunities also allows SMEs to prioritise and plan to respond to upcoming opportunities.

**When is my agency required to publish procurement plans?**

Buyers should provide as much advance notice as possible of upcoming procurement opportunities.

Advance notice can be provided by publishing Annual Procurement Plan, publishing a notice of proposed RFT or other early industry engagement activities.

Accredited agencies must publish an abridged version of their Annual Procurement Plan on the NSW eTendering website.
How can my agency engage a supplier to supply innovative goods and services?

Accredited agencies may directly purchase from an SME for short-term contracts of up to $1 million for proof of concept or outcomes-based trials. The test or trial should be designed to demonstrate the feasibility of a good and/or service to solve a specific problem or improve government service delivery.

The following conditions apply:

1. the supplier agrees that the agency is permitted to publish a report on the use of its products or services
2. the agency publishes a report on the outcome of the trial within 21 days of its completion (see below)
3. the procurement must be approved by the agency’s Chief Procurement Officer or agency head.

Agencies are permitted to procure one or more goods or services as part of the test or trial and should test all goods/services against a ‘control’ wherever possible. Where this is not possible, agencies should consider using data or information available about the same or similar products or services being used by other entities with the Australian public sector.

When assessing value for money prior to entering the trial, the agency should not assess the down-stream benefits of a successful trial as being greater than ten percent of the direct benefits of the trial.

Proof-of-concept testing should only be used to prove that a particular good or service can feasibly meet a business need and/or to identify costs with its (potential) wider use. Proof-of-concept testing cannot alone identify the preferred procurement solution.

Unless agreed otherwise, any intellectual property created during the course of the test or trial is retained by the supplier, and the agency should not be licensed for its ongoing use.

In meeting its obligation under (2) above, the agency is to publish a report on the ProcurePoint website about the test or trial, including:

- a statement by the agency as to why the test or trial was undertaken
- the identity of the supplier(s) involved in the test or trial, and whether the agency or the supplier-initiated negotiations leading to the test or trial
- the value and duration of the test or trial
- all data and findings associated with the trial, except where it is deemed commercial-in-confidence
- the treatment of intellectual property created during the trial
whether the agency has any further procurements planned to arise from the test or trial.

Commercially-sensitive information may be withheld from publication, including the supplier's intellectual property.

Following a successful trial period, agencies may continue to engage the SME for the supply of the goods or services obtained during the trial period using any suitable procurement method for a subsequent contract, including direct negotiation, subject to the NSW Government Procurement Policy Framework and agency procurement rules.