

Aboriginal Procurement Policy

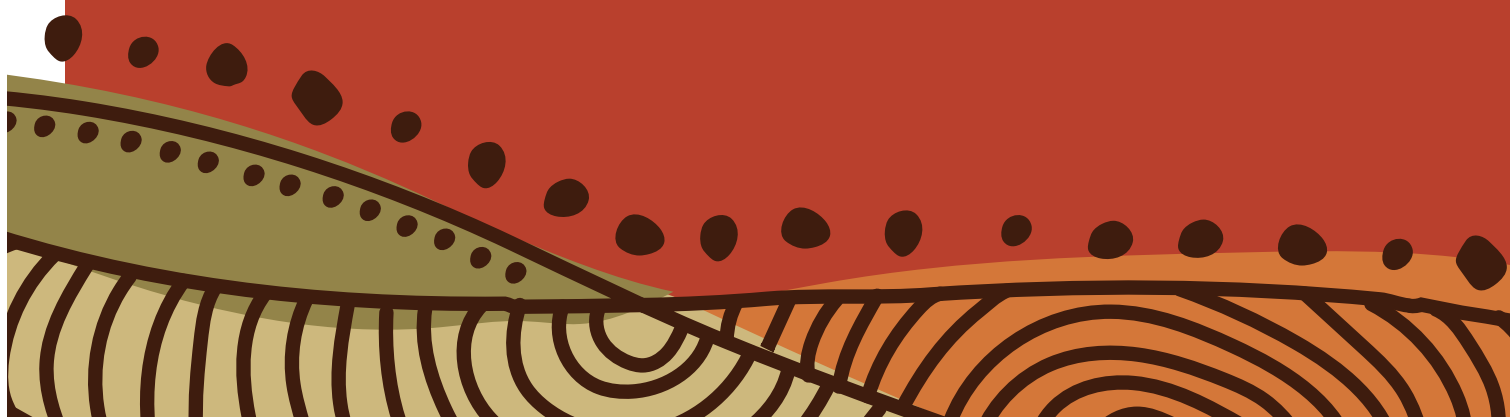
January 2021



Treasury

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Introduction

The NSW Government values the economic, social and cultural contribution of the Aboriginal and Torres Strait Islander peoples of NSW.

The Aboriginal Procurement Policy (APP) will contribute to the NSW Government's strategic economic policy of Growing NSW's First Economy. Government procurement provides a significant opportunity to increase skills and economic participation within the State's Aboriginal and Torres Strait Islander communities.

The APP supports the NSW Government Plan for Aboriginal Affairs, OCHRE, and is a key deliverable under the Aboriginal Economic Development framework.

Objectives

- > Support employment opportunities for Aboriginal and Torres Strait Islander peoples
- > Support sustainable growth of Aboriginal businesses by driving demand via Government procurement of goods, services and construction.

Targets by 31 December 2021

- > 1 per cent of total addressable spend: The APP aims for NSW Government clusters to direct one per cent of the cluster's addressable spend to Aboriginal businesses
- > 3 per cent of total goods and services contracts: The APP aims for NSW Government clusters to award three per cent of the total number of goods and services contracts to Aboriginal businesses
- > 3,000 full-time equivalent employment (FTE) opportunities supported: The APP aims to support an estimated 3,000 FTE opportunities for Aboriginal and Torres Strait Islander peoples through NSW Government procurement activities.



The APP applies to the procurement of goods, services and construction by all NSW Government agencies

The APP applies to the procurement of all goods and services, including construction, by a government agency, within the meaning of section 162 of the *Public Works and Procurement Act 1912* (the Act) (collectively referred to as 'clusters' or 'agencies' in this policy). State-Owned Corporations, the Parliament of NSW and local councils are not covered by this policy. State-Owned Corporations are encouraged to adopt aspects of the APP that are consistent with their corporate intent.

Commencement

NSW Government agencies must apply the APP to all relevant procurement activities from 1 January 2021. All agencies are encouraged to apply the policy at an earlier date, where practical.

Identifying an Aboriginal business

For the purpose of this policy, an Aboriginal business is one that has at least 50 per cent Aboriginal ownership and that is recognised through an appropriate organisation, such as Supply Nation or the NSW Indigenous Chamber of Commerce (NSWICC). These organisations maintain lists of Aboriginal businesses that are audited and undergo quality assurance.

Confirming the Indigenous heritage of employees

For the purpose of this policy, suppliers reporting on numbers of FTE employment opportunities for Aboriginal peoples on the contract must be able to demonstrate their process to confirm Aboriginal or Torres Strait Islander heritage in line with the guidance available on [Buy.NSW](#).

Accountability and transparency

The NSW Government will publicly hold itself to account for performance under the policy. Performance against policy targets will be published on [Buy.NSW](#) for the NSW Government as a whole and at a cluster level. The success of this policy will be assessed on the following performance indicators:

- > an increase in the number of Aboriginal businesses awarded contracts with the NSW Government
- > an increase in direct spend with Aboriginal businesses
- > an increase in FTE employment opportunities for Aboriginal and Torres Strait Islander peoples on NSW Government contracts.

Applying the APP – NSW Government agencies

Plan

Aboriginal Participation Strategy

Agencies must publish an annual Aboriginal Participation Strategy that describes how the agency will meet its obligations under the APP.

The strategy should identify and address upcoming procurement opportunities for Aboriginal participation, at a minimum for procurements valued at \$7.5 million or above. Strategies may be written at a cluster or agency level and must be published on the cluster's website.

Source

Aboriginal participation in contracts valued at \$7.5 million or above

Agencies must include minimum requirements for 1.5 per cent Aboriginal participation in all contracts valued at \$7.5 million or above by requiring one or a combination of the following:

- > at least 1.5 per cent of the contract value to be subcontracted to Aboriginal businesses
- > at least 1.5 per cent of the contract's Australian-based workforce (FTE), that directly contribute to the contract to be Aboriginal or Torres Strait Islander peoples¹

¹ The unit of measurement for workforce is the number of 'full-time equivalent' workers according to the definition of FTE relevant to the industry in which the contractor operates. Suppliers must outline how they define and measure FTE in their Aboriginal participation plans.

- > at least 1.5 per cent of the contract value to be applied to the cost of education, training or capability building for Aboriginal staff or businesses directly contributing to the contract.

Agencies should consider appropriate exclusions from the contract value in calculating their Aboriginal participation requirements. Exclusions are determined by agencies and may include specialised goods and services with very limited opportunities for Aboriginal participation. The application of any exclusion is at the discretion of the agency.

Subcontracts with Aboriginal businesses that support the delivery of NSW Government goods and services contracts may be manually reported to NSW Treasury and count toward the cluster's target of three per cent of goods and services contracts.

Agencies must:

- > Require tenderers to submit an Aboriginal Participation Plan during the procurement process that sets out how the tenderer plans to meet the Aboriginal participation requirements
- > Require tenderers to declare, during the procurement process, whether they have previously participated, or are currently participating, in a NSW Government contract that had Aboriginal participation requirements and, if applicable, demonstrate their compliance with the requirements. The past performance of a tenderer should be considered when assessing Aboriginal participation proposals

- > Include the final Aboriginal Participation Plan in the contract requirements set for the successful supplier or suppliers, including quarterly reporting against the plan and requirements for any Aboriginal participation spend balance to be retained by the agency or directed back to the agency to distribute to Training Services NSW.

Agencies should, whenever feasible:

- > provide a word limit for tender responses
- > use Plain English to make documents clearer and easier for readers to understand and act upon
- > apply an Aboriginal participation non-price evaluation criterion, so that the response may also be evaluated on its social commitments.

Source

Applying the APP for procurements valued below \$7.5 million

Where feasible, NSW Government agencies should give first consideration to Aboriginal businesses for procurements up to \$250,000.

Agencies may negotiate directly with an Aboriginal business for all procurements up to \$250,000, even if there is a mandated prequalification scheme or panel in place. The Aboriginal business engaged by the agency does not need to be a member of a NSW Government prequalification scheme. If one or more Aboriginal businesses are identified, the agency should engage with those suppliers before proceeding to the broader market.

Agencies are encouraged to disclose all contracts with Aboriginal businesses even where these are below the *Government Information (Public Access) Act 2009* contract disclosure threshold. All disclosed contracts will contribute to the cluster targets of three per cent of goods and services contracts.

Agencies should, wherever feasible, provide constructive feedback to unsuccessful tenderers on their tender responses. This feedback should be provided with a view to building the capability of Aboriginal businesses to apply successfully for future opportunities.

Manage

Agencies must:

- > Manage suppliers' compliance with the APP including reporting in accordance with the APP reporting requirements
- > Take reasonable steps to support suppliers to meet the requirements
- > Confirm claims made by the supplier in relation to Aboriginal participation and address any compliance or performance issues, should they arise
- > Support and assist in audits in line with the NSW Procurement Board's commitment to undertake a random audit of five per cent of contracts annually
- > Conduct a final review of performance against the Aboriginal Participation Plan at the completion of the contract
- > Direct any remaining balance of Aboriginal participation spend to Training Services NSW within three months of the completion of the contract or earlier if the supplier confirms the Aboriginal participation targets will not be met.

Applying the APP — Government suppliers

Suppliers must:

- > Comply with the requirements in this policy and additional requirements set by agencies and the NSW Procurement Board in support of the policy objectives
- > Allocate the minimum 1.5 per cent, or a higher percentage as agreed with the contracting agency, of contract value to Aboriginal participation
- > Submit an Aboriginal Participation Plan during the tender process, setting out how the supplier will meet the Aboriginal participation requirements of the contract
- > Work with the contracting agency to successfully implement the Plan
- > Report quarterly on progress toward the Plan in the format and method required by this policy
- > Support and cooperate with audits of Aboriginal Participation Plans and reporting
- > Provide a final report on completion of the contract, including a final reconciliation against the Aboriginal participation requirements. This report may be submitted as the supplier's last required quarterly report, in line with the reporting format and method required by this policy

- > Where participation requirements have not been met, the remaining balance is to be collected by the contracting agency and directed to the account held by Training Services NSW. Funds cannot be transferred by suppliers. Agencies may choose to retain the Aboriginal participation spend at the start of the contract and allocate this spend progressively to suppliers as progress against the Plan is demonstrated.

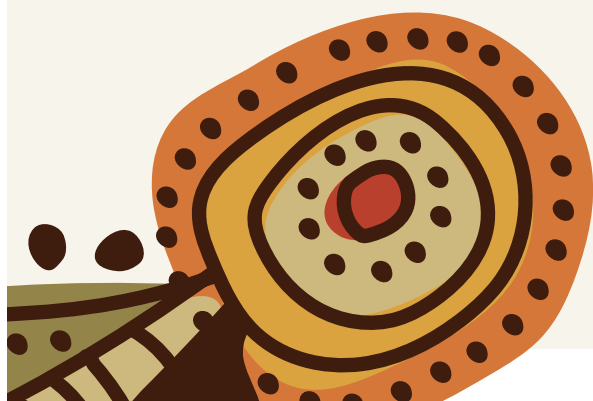
Aboriginal Participation Fund

Training Services NSW has established the Aboriginal Participation Fund to receive payments when a supplier does not meet contracted Aboriginal participation requirements. Training Services NSW will use these funds to target skills and capacity gaps, education and capability-building programs for Aboriginal peoples and businesses to enable participation requirements to be met for future NSW Government contracts.

NSW Government encourages supplier feedback on any areas of focus to enable future Aboriginal participation requirements to be met.

Reporting

Suppliers are required to report quarterly on progress against their commitments in the Aboriginal Participation Plan in the format and method required by this policy, and as it is updated from time to time.



Target: 1 per cent addressable spend

The APP aims for clusters to direct one per cent of addressable spend to Aboriginal businesses by the end of 2021. In response to the 2019 policy review recommendation to strengthen accountability, NSW Treasury will publish cluster targets annually and report on cluster progress towards the targets.

What is addressable spend?

The NSW Government categorises its procurement spend in accordance with the United Nations Standard Products and Services Code (UNSPSC).

For the purposes of the APP, NSW Treasury has defined 'addressable' spend as a category of spend where there are opportunities for agencies to engage Aboriginal businesses. Addressable spend has primarily been set based on categories of goods and services provided by businesses registered with NSWICC and Supply Nation.

'Non-addressable' spend is a category of spend where there are very limited opportunities for agencies to engage Aboriginal businesses. It includes categories where there are no recognised Aboriginal businesses able to supply to government, spend subject to mandated whole-of-government contracts, foster care payments or jury costs, spend on utilities, grants, and spend to other government entities, State-Owned Corporations, or Statutory Authorities.

A uniform list of addressable spend categories has been established. Performance in spend categories and changes in opportunities across the categories will be reviewed annually.

Calculating the addressable spend target

The addressable spend for each cluster is the average of a cluster's total spend in the addressable spend categories over three previous financial years. The one per cent addressable spend target is one per cent of the cluster's addressable spend.

Cluster addressable spend (CAS)

Addressable spend (AS)

CAS = The average of the cluster's total spend in addressable spend categories over the three previous financial years.

$$\text{CAS} = (\text{AS}^{\text{Y1}} + \text{AS}^{\text{Y2}} + \text{AS}^{\text{Y3}}) / 3$$

Cluster addressable spend target (CAST)

$$\text{CAST} = 0.01 \times \text{CAS}$$

Y¹, Y², Y³ = Financial year 1, 2 and 3

How is cluster progress toward the spend target to be reported?

The Australian Business Numbers (ABNs) of verified Aboriginal businesses are matched against NSW Government procurement spend data. Work is underway to capture spend with Aboriginal businesses on purchasing cards (P-cards). In the interim, clusters may manually report P-card spend with Aboriginal businesses to NSW Treasury.

Target: 3 per cent goods and services contracts

The APP aims for Aboriginal businesses to be awarded at least three per cent of the total number of NSW Government contracts for goods and services by the end of 2021. In response to the 2019 policy review recommendation to strengthen accountability, the targets are set by cluster. The target excludes construction contracts and non-procurement contracts. NSW Treasury will publish cluster targets annually and report on cluster progress towards the targets.

Calculating the contracts target

Targets are calculated annually based on three per cent of the average total goods and services contracts disclosed by a cluster on the Government's contract register over the previous three financial years. Each contract disclosed is counted as one contract. The data may be adjusted in consultation with the relevant cluster to remove contracts excluded from the target. This method has been adopted to set the targets as the total number of contracts awarded varies from year to year and will not be known in advance.

Clusters are required to disclose contracts valued at \$150,000 or above (including GST) on the Government's contract register, in accordance with the Government Information (Public Access) Act 2009. Clusters are encouraged to disclose lower value contracts with Aboriginal businesses for increased visibility of engagements.

Average cluster contracts (ACC)

Total cluster contracts (TCC)

$$ACC = (TCC^{Y1} + TCC^{Y2} + TCC^{Y3})/3$$

Cluster contracts target (CCT)

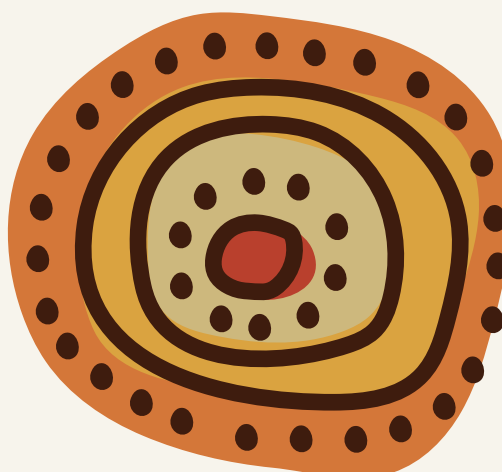
$$CCT = 0.03 \times ACC$$

Y¹, Y², Y³ = Financial year 1, 2 and 3

Contract count only includes goods and services contracts.

How is cluster progress toward the contracts target reported?

The ABNs of verified Aboriginal businesses are matched against disclosed contracts in the NSW Government's contract register. In response to a 2019 policy review recommendation, subcontracts with Aboriginal businesses directly related to a NSW Government goods and services contract may be manually reported to NSW Treasury and count toward the cluster's contracts target. Reporting on progress towards the targets will specify the number of direct contracts and subcontracts represented in the total numbers.



Target: 3,000 Aboriginal FTE employment opportunities

The NSW Government target for supporting employment opportunities for Aboriginal people is set at a whole-of-government level. The APP aims to support an estimated 3,000 FTE employment opportunities for Aboriginal and Torres Strait Islander peoples through NSW Government procurement opportunities by the end of 2021. This target commenced in July 2018 through the previous Aboriginal Procurement Policy and the revised Aboriginal Participation in Construction policy.

How is progress toward the employment opportunities target reported?

Reporting against this target is captured via supplier reporting of employment opportunities supported on NSW Government contracts valued at \$7.5 million or above.

The unit of measurement for workforce is the number of 'full-time equivalent' workers according to the definition of FTE relevant to the industry in which the contractor operates. Suppliers must outline how they define and measure FTE in their Aboriginal Participation Plans.

For the purpose of this policy, suppliers reporting on numbers of FTE employment opportunities for Aboriginal or Torres Strait Islander peoples must be able to demonstrate their process to confirm Aboriginal or Torres Strait Islander heritage in line with the guidance on [Buy.NSW](#).

Governance

NSW Procurement Board

The NSW Procurement Board is responsible for the administration, monitoring and reporting of this policy. This includes:

- > conducting audits and reviews of the policy
- > dealing with complaints about the application of the policy via its established complaints-handling procedures
- > exempting specific projects or classes of projects and allocating specific requirements against individual contracts
- > issuing directions to agencies, including the use of standard form contract clauses in contracts subject to this policy.

Procurement complaints

Complaints about procurement matters should be directed to the relevant contracting agency. Complaints should be resolved in a non-adversarial and cooperative manner. The Office of the Small Business Commissioner can provide mediation services to small businesses if necessary.

If complaints cannot be resolved directly with the agency, or further action is required, complaints should be managed in accordance with the NSW Government Complaints Management Guidelines.

Aboriginal Participation Fund

The Fund receives unspent Aboriginal participation funds from NSW Government contracts subject to the policy. This Fund is administered by Training Services NSW. Decisions relating to the distribution of funds are managed by Training Services NSW in consultation with the Aboriginal Participation Fund Governance Committee. More information can be found in the APP support and guidance materials.

Review of the APP

The outcomes and effectiveness of the APP will be reviewed in 2022. The Deputy Ombudsman (Aboriginal Programs) has a legislated function to independently monitor and assess the

implementation of prescribed Aboriginal programs, including OCHRE. This function is an integral part of the overall accountability framework for OCHRE.

Further information

Support and guidance materials can be found through the links provided in this policy or on www.buy.nsw.gov.au.

For further information, please contact BUY.NSW on **1800 679 289** or nswbuy@treasury.nsw.gov.au

