



## Treasury

Type:  
NSW Procurement Board Direction

Identifier:  
PBD 2023-03

Status:  
Active

# PBD 2023-03 Procurement opportunities for small (and medium) businesses

## Description

Procurement arrangements that apply when procuring from and engaging small (and medium) businesses.

## Detailed Outline

### Application

This Direction applies to procurements by or for a government agency within the meaning of section 162 of the [Public Works and Procurement Act 1912](https://www.legislation.nsw.gov.au/#/view/act/1912/45) (<https://www.legislation.nsw.gov.au/#/view/act/1912/45>). All values are exclusive of GST.

This Direction applies to all new tenders, engagements and contracts, and does not apply to any in-flight arrangements.

#### 1. Direct procurement from small (and medium) businesses

Agencies may negotiate directly with and engage small (and medium) businesses when procuring goods or services, excluding construction, valued up to and including \$250,000, including where there are mandated procurement arrangements in place.

#### 2. Minimising insurance requirements

Agencies must only require small (and medium) businesses to provide insurance details and/or a certificate of insurance at the time of contract award rather than, for example, when responding to a request for submission.

Agencies must ensure procurement documents:

- define the minimum insurance levels that apply to the contract so that small (and medium) businesses can confirm they are able to secure the relevant insurances, and are able to price their submissions appropriately.
- state that it is a condition of contract award that the successful supplier provide a certificate of insurance or appropriate evidence they have minimum insurances in place, and that this evidence must be provided before the contract is executed.

The following provisions that apply to goods and services procurement under the [Small and Medium Enterprises \(SME\) and Regional Procurement Policy](https://info.buy.nsw.gov.au/policy-library/policies/sme-and-regional-procurement-policy) (<https://info.buy.nsw.gov.au/policy-library/policies/sme-and-regional-procurement-policy>) are extended to construction procurement, including subcontracting arrangements:

- ensure the minimum possible levels of public liability and professional indemnity insurance are imposed on small (and medium) businesses
- allocate risk to the party best placed to mitigate or manage it, which may or may not be the supplier
- only require professional indemnity insurance if the agency is procuring professional services or expert advice.

### 3. Verification

Agencies must take reasonable steps to verify and confirm that small (and medium) businesses meet the definitions noted at item 6.

### 4. Implementation timing

All government agencies are required to implement item 1, direct procurement from small (and medium) businesses, and item 2, minimising insurance requirements, no later than 31 December 2023.

### 5. Recordkeeping and reporting

Each agency is required to document compliance with this board direction and periodically report on compliance to the Principal Department of an affiliated group of agencies. The Principal Department of an affiliated group of agencies must report on compliance with this direction at least annually (and as otherwise requested) to the Procurement Board and Minister for Domestic Manufacturing and Government Procurement.

### 6. Definitions

An SME is an Australian or New Zealand based enterprise with fewer than 200 full-time equivalent (FTE) employees. Further to this:

- a **small business** is defined as an enterprise with 1-19 FTE employees, including sole traders and start-ups.

- a **medium** business is defined as an enterprise with 20-199 FTE employees.

Subsidiaries, partnerships or joint enterprises connected to a large business are excluded from these provisions.

A **large business** is an entity with 200 or more FTE employees.

## 7. Implementation guidance on insurance

If a procurement carries insurable risks that are complex or unusual, agencies should provide clear advice to tenderers early in the tender process to ensure small (and medium) businesses are not unreasonably excluded from participating.

In extenuating circumstances, entities may require small (and medium) business suppliers to provide assurances at the time they provide a procurement submission that they are able to obtain the required insurances but only where a risk assessment identifies there is no alternative mitigation to an identified risk. The justification, including the risk assessment, must be documented in the business case or procurement strategy, and approved by the agency's Chief Procurement Officer (or equivalent). Agencies may not sub-delegate this approval.

## 8. Transitional arrangements

### Amendments to SME and Regional Procurement Policy

This Direction works in parallel with the SME and regional supplier exemption under the SME and Regional Procurement Policy. The SME and regional supplier exemption allows agencies to negotiate directly with and engage an SME or regional supplier to provide goods or services (excluding construction) valued up to \$150,000. This will continue to support regional businesses while increasing the threshold for direct procurement with small (and medium) businesses from \$150,000 to \$250,000.

### Procurement of construction services from small businesses

The \$50,000 small business exemption in **[PBD 2019-03 Access to government construction opportunities by SMEs](https://arp.nsw.gov.au/pbd-2019-03-construction-procurement-opportunities-SME)** (<https://arp.nsw.gov.au/pbd-2019-03-construction-procurement-opportunities-SME>) continues to apply to procurement of construction.

### In-flight arrangements

This direction does not apply to procurements that are in-flight on the date the direction commences. A procurement is in-flight if the procurement has commenced. A procurement is considered to have commenced if and when:

- a) the business case which contains a strategy for approaching the market for the procurement is:
  - i) submitted for review to another government entity as part of a mandatory process (for example, an investor assurance (Gateway) process),
  - ii) if i) is not applicable, approved by the government agency

- b) If a) is not applicable, the strategy for approaching the market for the procurement is approved by the government agency
- c) If neither a) nor b) is applicable, a request for submissions (Rfx) is released by the government agency.

## Context

This Procurement Direction contains provisions that simplify and streamline procurement requirements for government agencies engaging small (and medium) businesses.

The Minister for Domestic Manufacturing and Government Procurement, Courtney Houssos MLC, on 5 November 2023 directed the NSW Procurement Board to issue this direction.

## Act

### **Public Works and Procurement Act 1912**

(<https://legislation.nsw.gov.au/view/html/inforce/current/act-1912-045#pt.11>)

## Overview

Who needs to know and/or comply with this?
Councils under the Local Government Act
Departments
Executive agencies related to Departments
Separate agencies
Advisory Entities (including Boards and Committees)
State Owned Corporations
Statutory Authorities/Bodies
Subsidiaries of the NSW Government established under the Corporations Act
Universities
Compliance
Mandatory

AR Details	
Date Issued	Dec 7, 2023
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Replaces	
Replaced By	

Contacts	
Contact	
Phone	
Publishing Entity	The Treasury
Issuing Entity	The Treasury