

## NSW Health Procurement (Goods and Services) Policy

**Summary** This Policy Directive details the principles and processes that NSW Health agencies must apply when procuring or disposing of goods or services and managing the resulting contracts.

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**Distributed to** Ministry of Health, Public Health System, NSW Ambulance Service

**Audience** All Staff of NSW Health

Secretary, NSW Health

This Policy Directive may be varied, withdrawn or replaced at any time. Compliance with this directive is mandatory for NSW Health and is a condition of subsidy for public health organisations.



# NSW Health

## POLICY DIRECTIVE

### NSW Health Procurement (Goods and Services)

#### POLICY STATEMENT

NSW Health agencies must develop effective procurement strategies that deliver value for money outcomes and ongoing benefits to support service delivery across NSW Health.

#### SUMMARY OF POLICY REQUIREMENTS

This Policy Directive applies to the procurement of goods and services of any kind by NSW Health agencies (including the procurement of goods and services forming part of construction and infrastructure projects).

NSW Health takes a risk-based approach to procurement. This means that the required procedures, roles and responsibilities of NSW Health agencies will depend on the value and the level of risk of the procurement.

#### Goods and Services Procurement

NSW Health agencies are responsible for conducting their own procurements (exception see ICT Procurement) by:

- using existing procurement arrangements for goods or services of any value,
- procuring outside existing procurement arrangements (and approaching the market) for goods or services valued at \$250,000 or less.

NSW Health agencies must refer goods and services procurements outside of existing procurement arrangements valued at more than \$250,000 to HealthShare NSW.<sup>1</sup>

All NSW Health agencies must refer ICT-related procurements outside of whole-of-health or whole-of-government contracts valued at more than \$250,000 to eHealth NSW.

NSW Health agencies must use whole-of-government or whole-of-health contracts for obtaining goods or services to which those contracts apply in accordance with the NSW Procurement Board Direction *Approved Procurement Arrangements* ([PBD 2021-04](#)). Limited conditions, exceptions and exemptions apply, including:

- where the procurement is for professional services or ICT-related goods and services
- where a procurement-connected policy exemption is utilised
- where the goods or services are valued at \$10,000 or less

<sup>1</sup> Health Infrastructure may conduct the procurement of goods and services (including ICT-related goods and services) forming part of construction and infrastructure projects.



# NSW Health

## POLICY DIRECTIVE

- to the extent of any inconsistency with a decision of Cabinet or any Cabinet Standing Committee, or
- where the NSW Health Chief Procurement Officer has approved an exemption.

NSW Health agencies must use whole-of-government prequalification schemes or procurement lists for obtaining goods or services to which those prequalification schemes or procurement lists apply, if they are mandated by the NSW Procurement Board in the NSW Procurement Board Direction *Approved Procurement Arrangements* ([PBD 2021-04](#)). Limited exceptions and exemptions apply.

For procurements outside existing procurement arrangements which are valued at \$30,000 or less, streamlined procedures apply, including the need for one written quote for procurements valued between \$10,000 and \$30,000.

For procurements outside existing procurement arrangements which are valued at more than \$30,000, NSW Health agencies must:

- use the Risk Assessment Tool to determine the procurement level (level 1, level 2 or level 3), and
- comply with the applicable procedures for the procurement level (more detailed procedures apply for procurements which are high value or high risk).

NSW Health agencies are required to conduct certain minimum contract management activities depending on the contract value and/ or method of procurement.

The NSW Health Chief Procurement Officer may grant exemptions to specific policy or process requirements.

### ICT Procurement

When procuring ICT-related goods and services, NSW Health agencies must:

- where the procurement involves laptops or desktop computers of any value, NSW Health agencies must obtain approval from eHealth NSW before commencing the procurement
- where available on an existing contract, use whole-of-health or whole-of-government contracts for ICT-related procurements of any value
- where the ICT-related goods or services are valued at more than \$150,000 and are not available on a whole-of-health or whole-of-government contract, the procurement must be referred to and approved by eHealth NSW (even if these goods or services are available on the *ICT Services Scheme* ([SCM0020](#))).
- where the ICT-related goods or services are valued at less than \$150,000 and are not available on an existing contract, NSW Health agencies must use the *ICT Services Scheme* ([SCM0020](#)).

The NSW Health Chief Procurement Officer may grant exemptions to specific policy or process requirements.



# NSW Health

## POLICY DIRECTIVE

### REVISION HISTORY

Version	Approved By	Amendment Notes
PD2023_028 October 2023	Deputy Secretary, FSAM and CFO	Updated to amend professional services requirements in section 5 and incorporate eHealth NSW feedback on ICT procurement requirements.
PD2022_020 June 2022	Secretary, NSW Health	Updated to comply with whole-of-government policy changes, clarify legislative requirements and provide additional guidance for NSW Health agencies.
PD2019_028 July-2019	Deputy Secretary, FSAM and CFO	Updated policy and procedures documents, based on user experience during past six months
PD2018_030 August-2018	Acting Chief Financial Officer and Deputy Secretary FSAM	Updated policy, procedures and risk assessment tool
PD2014_005 March-2014	General Governance, Deputy Director Workplace and Corporate	Addition of new clause 4.3.6 Purchasing from Aboriginal Businesses
PD2013_023 August-2013	Deputy Director General Governance, Workplace and Corporate	Sets the latest procurement policy and Introduces the new Goods and Services Procurement Policy Manual. This policy combined with the new Goods and Services Procurement Policy Manual replaces the Supply Procedures, and the Purchasing and Supply manuals and the following associated Policy Directives and Information Bulletins: PD2005_093, PD2005_146, PD2005_260, PD2007_073 PD2009-021, PD 2009_054, PD 2011_017, IB2006_005 IB2006_009, IB2007_002, IB2007_039, IB2009_008 IB2009_022, IB2010_059, IB2011_016

### CONTENTS

<b>CONTENTS</b> .....	<b>1</b>
<b>1. BACKGROUND</b> .....	<b>3</b>
1.1. About this document .....	3
1.2. Key definitions.....	3
1.3. Legal and legislative framework .....	4
<b>2. PROCUREMENT FRAMEWORK</b> .....	<b>5</b>
2.1. Procurement governance .....	5
2.2. Enforceable procurement provisions .....	6
<b>3. EFFECTIVE PROCUREMENT, PROBITY AND FAIRNESS</b> .....	<b>7</b>
3.1. Ethical and professional conduct.....	7
<b>4. GETTING STARTED</b> .....	<b>8</b>
4.1. Identify business need .....	8
4.2. Align with the NSW Health Asset Management Framework .....	8
4.3. Consider sustainability and resource efficiency .....	8
4.4. Calculate estimated contract value.....	9
4.5. Procurements valued at \$10,000 or less .....	9
4.6. Check for procurement-connected policy exemptions and preferences.....	9
<b>5. USING EXISTING PROCUREMENT ARRANGEMENTS</b> .....	<b>10</b>
5.1. Whole-of-government and whole-of-health contracts .....	10
5.2. Whole-of-government prequalification schemes and procurement lists .....	10
<b>6. OUTSIDE EXISTING PROCUREMENT ARRANGEMENTS</b> .....	<b>13</b>
6.1. Steps to commence procurements.....	13
6.2. Prepare Procurement Plan.....	15
6.3. Check if Gateway Review Process applies .....	15
6.4. Choose procurement method and decide on approach to market method.....	15
6.5. Consider modern slavery risks .....	16
6.6. Obtain financial approval.....	16
6.7. Prepare approach to market documentation .....	17
6.8. Prepare evaluation plan .....	18
6.9. Prepare proposed contract.....	18
6.10. Obtain approval of Evaluation Plan .....	19
6.11. Obtain approval to commence procurement.....	19

6.12. Release approach to market documentation .....	19
6.13. Conduct approach to market process.....	19
6.14. Evaluate responses and select suppliers .....	20
6.15. Obtain approvals to award contract.....	21
6.16. Award contract.....	21
6.17. Notify and debrief unsuccessful suppliers .....	22
6.18. Keep records and identify benefits and lessons learnt.....	22
<b>7. CONTRACT MANAGEMENT .....</b>	<b>22</b>
7.1. Managing contracts valued at less than \$30,000.....	22
7.2. Managing contracts established using existing procurement arrangements .....	23
7.3. Managing contracts established outside existing procurement arrangements .....	23
<b>8. OTHER RELEVANT CONSIDERATIONS.....</b>	<b>28</b>
8.1. Legal.....	28
8.2. Unsolicited proposals .....	28
8.3. Public-private partnership arrangements.....	28
8.4. Procurements approved by Cabinet or a Cabinet Standing Committee .....	28
8.5. Emergency procurements .....	28
8.6. Foreign exchange risks .....	29
8.7. Disposals and donations .....	29
8.8. Modern slavery .....	30
8.9. Exemptions to this document .....	30

## 1. BACKGROUND

### 1.1. About this document

This Policy Directive outlines the relevant roles and responsibilities for procurement within NSW Health as well as mandatory requirements for procuring goods and services and managing contractual arrangements with suppliers.

This Policy Directive applies to all NSW Health agencies.

This Policy Directive is to be read in conjunction with *NSW Health Procurement Procedures (Goods and Services)* ([Procedures](#)). The Procedures are an extension of this Policy Directive, providing further context and detail on procurement procedures at NSW Health.

NSW Health agencies must comply with both this Policy Directive, Procedures and all memorandums issued by the NSW Health Chief Procurement Officer.

### 1.2. Key definitions

The key definitions in this document are outlined in the table below. For more definitions, please refer to the Procedures.

<b>contracting delegate</b>	The person who has authority to execute a contract on behalf of a NSW Health agency.
<b>covered procurement</b>	A procurement that is covered by the <i>EPP</i> .
<b>EPP Direction</b>	The NSW Procurement Board Direction <i>Enforceable Procurement Provisions</i> ( <a href="#">PBD 2019-05</a> ) made under the <i>Public Works and Procurement Act 1912</i> (NSW), as amended from time to time.
<b>existing procurement arrangements</b>	Means: <ul style="list-style-type: none"> <li>• whole-of-government and whole-of-health contracts</li> <li>• whole-of-government prequalification schemes and procurement lists</li> <li>• agreements managed by other NSW Government or NSW Health agencies.</li> </ul>
<b>financial delegate</b>	The person who has authority to commit to financial expenditure and grant relevant approval on behalf of a NSW Health agency.
<b>prequalification scheme</b>	A list of prequalified suppliers that meet minimum relevant experience and qualification standards to supply certain goods or services.

<b>procurement delegate</b>	The person who has authority to approve specified procurement activities on behalf of a NSW Health agency.
<b>procurement list</b>	A list of prequalified suppliers that meet minimum experience and qualification standards to supply certain goods or services, including categories covered by the <i>Enforceable Procurement Provisions Direction</i> .

All dollar values and thresholds in this Policy Directive are in Australian currency and are exclusive of GST (unless otherwise stated).

### **1.3. Legal and legislative framework**

The *Public Works and Procurement Act 1912* (NSW) establishes the NSW Procurement Board, which requires NSW Health agencies to procure goods and services in accordance with NSW Procurement Board policies and directions, including the [NSW Government Procurement Policy Framework](#).

NSW Health agencies must also comply with all other applicable laws and government policies, including the following procurement-related legislation:

- *Government Information (Public Access) Act 2009* (NSW)
- *Government Sector Finance Act 2018* (NSW)
- *Health Administration Act 1982* (NSW)
- *Health Services Act 1997* (NSW)
- *Modern Slavery Act 2018* (Cth)
- *Plastic Reduction and Circular Economy Act 2021* (NSW)
- *Public Works and Procurement Act 1912* (NSW)
- *Public Works and Procurement Regulation 2019* (NSW)
- *State Records Act 1998* (NSW).



## **2. PROCUREMENT FRAMEWORK**

### **2.1. Procurement governance**

#### **2.1.1. HealthShare NSW**

Unless using an existing procurement arrangement, NSW Health agencies must refer procurements valued above \$250,000 to HealthShare NSW (except information and communications technology (**ICT**)-related procurements).<sup>1</sup>

Procurements valued at \$30 million or more are also to be approved by the NSW Health Chief Procurement Officer.

Where a NSW Health agency does not follow advice provided by HealthShare NSW, the NSW Health Chief Procurement Officer must approve an exemption for the agency to proceed contrary to this advice.

#### **2.1.2. eHealth NSW**

When procuring ICT-related goods and services, NSW Health agencies must:

- where the procurement involves laptops or desktop computers of any value, NSW Health agencies must obtain approval from eHealth NSW before commencing the procurement
- where available on an existing contract, use whole-of-health or whole-of-government contracts for ICT-related procurements of any value
- where the ICT-related goods or services are valued at more than \$150,000 and are not available on a whole-of-health or whole-of-government contract, the procurement must be referred to and approved by eHealth NSW (even if these goods or services are available on the *ICT Services Scheme* ([SCM0020](#))).
- where the ICT-related goods or services are valued at less than \$150,000 and are not available on an existing contract, NSW Health agencies must use the *ICT Services Scheme* ([SCM0020](#)).

eHealth NSW will approve the Procurement Plan, Evaluation Plan and Evaluation Report for a policy compliant procurement process that is undertaken within eHealth NSW.

Procurements valued at \$30 million or more are also to be approved by the NSW Health Chief Procurement Officer. Where a NSW Health agency does not follow advice provided by eHealth NSW, the NSW Health Chief Procurement Officer must approve an exemption for the agency to proceed contrary to this advice.

<sup>1</sup> This does not apply to the NSW Ministry of Health or Health Professional Councils Authority, which may conduct procurements (except ICT-related procurements) valued at more than \$250,000 on their own behalf. This does not apply to Health Infrastructure (refer to section 2.1.3).

### **2.1.3. Health Infrastructure**

Health Infrastructure will conduct all procurement of goods and services which form part of construction and infrastructure projects.

In doing so, Health Infrastructure must use an existing procurement arrangement, unless:

- the goods or services required are not covered by an existing procurement arrangement, or
- Health Infrastructure can obtain better value for money (assessed from a whole of system perspective) outside existing procurement arrangements, and provided that Health Infrastructure also:
  - engages with (but does not necessarily procure through):
    - HealthShare NSW (for all procurement except ICT-related procurement), and/ or
    - eHealth NSW (for ICT-related procurement)
  - obtains approval of the Procurement Plan from the NSW Health Chief Procurement Officer (after HealthShare NSW and/ or eHealth NSW endorsement of that plan) before commencing the approach to market, and
  - obtains approval of the Evaluation Report from the NSW Health Chief Procurement Officer (after HealthShare NSW and/ or eHealth NSW endorsement of that report) before awarding the contract.

Procurements of goods and services by Health Infrastructure valued at \$30 million or more are also to be approved by the NSW Health Chief Procurement Officer.

## **2.2. Enforceable procurement provisions**

The EPP Direction defines requirements for procurements conducted by certain government agencies.

Government agencies listed in Schedule 1 of the EPP Direction are required to comply with the enforceable procurement provisions when conducting covered procurements. The Ministry of Health is the only NSW Health agency listed in Schedule 1 of the EPP Direction and therefore the only NSW Health agency required to comply with the EPP Direction.

The EPP Direction must also be complied with if another government agency or third party (including HealthShare NSW or eHealth NSW) is conducting a procurement of goods and services:

- on behalf of the Ministry of Health, or any other listed government agency
- that is valued at more than the relevant procurement threshold
- where there are no exemptions applicable to the procurement.

Where a covered procurement is being conducted, NSW Health agencies must follow the level 3 procurement process.

Except in limited circumstances (refer to clause 15 of the EPP Direction), covered procurements must use:

- an open approach to market
- a procurement panel established by an open approach to market, or
- a procurement list established under the board direction.

### ***ICT Services Scheme***

Additional requirements apply for procurements under the *ICT Services Scheme* ([SCM0020](#)) by NSW Health agencies covered by the EPP Direction. For procurements by or for the Ministry of Health, and valued at \$680,000 or more, NSW Health agencies must refer the procurement to eHealth NSW, who must ensure that:

- at least three written quotes have been obtained
- justification has been provided in the approach to market documentation for limiting the number of suppliers invited to provide quotes, in line with section 14.1 of the *ICT Services Scheme* ([SCM0020](#)) [Rules](#)
- the suppliers invited to quote are selected in compliance with section 14.2 of the *ICT Services Scheme* ([SCM0020](#)) [Rules](#)
- the procurement process is otherwise EPP compliant.

### ***Procurements to establish or renew a whole-of-government contract***

HealthShare NSW and eHealth NSW must ensure the procurement process used to establish or renew whole-of-government contracts complies with the EPP Direction (unless an exemption outlined in Schedule 2 of the EPP Direction applies).

## **3. EFFECTIVE PROCUREMENT, PROBITY AND FAIRNESS**

### **3.1. Ethical and professional conduct**

The probity principles of 'fairness', 'impartiality', 'accountability', 'transparency' and 'value for money' must govern procurement decision-making by NSW Health agencies.

This section must be read in conjunction with the NSW Health policy directives:

- NSW Health Policy Directive *Code of Conduct* ([PD2015\\_049](#))
- NSW Health Policy Directive *Conflicts of Interest and Gifts and Benefits* ([PD2015\\_045](#)).

Appropriate records must be kept in relation to procurement planning, management and decision-making in accordance with the *State Records Act 1988* (NSW). All confidential information that is provided by suppliers, including as part of approach to market responses, must be treated fairly, impartially and securely.

In addition to the requirements of the NSW Health Policy Directive *Conflicts of Interest and Gifts and Benefits Policy* ([PD2015\\_045](#)), for level 2 and level 3 procurements, each person

involved in the procurement process must complete the *Confidentiality and Conflict of Interest Undertaking* before any involvement in the procurement.

Confidential information must only be accessed by key participants in the evaluation process on a need to know basis only, and after they have completed a *Confidentiality and Conflict of Interest Undertaking*.

### 3.2. Supplier Code of Conduct

The [NSW Government Supplier Code of Conduct](#) sets a minimum set of expectations and behaviours for doing business with NSW Government. The Supplier Code of Conduct expects that suppliers and their supply chains commit to the highest ethical standards, including that they protect and prevent the release of Government information; disclose real or perceived conflicts of interest and not offer NSW Government employees or contractors any financial or non-financial benefits.

The Supplier Code of Conduct advises suppliers that non-compliance with the Supplier Code of Conduct may lead to termination of contracts, loss of future work, loss of reputation, investigation for corruption, criminal investigation or suspension or removal from prequalification schemes and panel arrangements.

All suppliers must agree to the terms of the Supplier Code of Conduct and a copy *must* be included in all sourcing documents and the contractual documents provided to the supplier.

## 4. GETTING STARTED

### 4.1. Identify business need

The first step before commencing any procurement is to identify the business need for the goods and/ or services, including present and future needs.

### 4.2. Align with the NSW Health Asset Management Framework

NSW Health agencies must ensure that asset investments, and consequently any planned asset procurements are based on a balance of cost, risk and performance and aligned with the strategic priorities of NSW Health and the NSW Health Policy Directive *Asset Management* ([PD2022 044](#)).

NSW Health agencies must also consider whole-of-lifecycle asset management requirements, costs and benefits when developing the asset procurement strategy, assessing value for money and establishing contract management requirements.

### 4.3. Consider sustainability and resource efficiency

NSW Health agencies must ensure applicable goods and services (for example, electrical appliances and water using appliances) comply with the minimum standards set out in the [NSW Government Resource Efficiency Policy](#).

#### **4.4. Calculate estimated contract value**

NSW Health agencies must calculate a genuine, estimated contract value for the goods or services to be procured.

Where the estimated contract value increases during the procurement process such that it passes a relevant procurement threshold, the NSW Health Chief Procurement Officer or procurement delegate must be notified who may advise of further steps to be taken.

Procurement must not be 'split' to avoid reaching the next procurement threshold.

#### **4.5. Procurements valued at \$10,000 or less**

NSW Health agencies may procure goods and services (excluding professional services) valued at \$10,000 or less directly from any supplier, regardless of whether they are available on an existing procurement arrangement. NSW Health agencies must use a PCard, where permitted, for procurements valued up to \$10,000, in line with the requirements of [NSW Health Policy Directive Procurement Cards within NSW Health \(PD2022\\_038\)](#).

Goods or services must still meet all applicable quality, safety, security and regulatory requirements and rates must be reasonable and consistent with normal market rates.

All professional services engagements, regardless of value, must be sourced using the existing arrangements indicated in section [5.2.2](#).

All procurements of ICT-related goods and services valued at \$10,000 or less must be sourced using existing whole-of-health or whole-of-government contracts. Where the items are not available on an existing contract, the *ICT Services Scheme* ([SCM0020](#)) should be used where goods and services are available.

Note that this exemption does not apply to the procurement of professional services, where the appropriate scheme must be used for all engagements.

#### **4.6. Check for procurement-connected policy exemptions and preferences**

The NSW Government [Procurement Policy Framework](#) provides for procurement-connected policy exemptions and preferences. These include policy exemptions and preferences for Aboriginal businesses, small or medium enterprise and regional suppliers, Australian disability enterprises, ICT/ digital small or medium enterprises and social enterprises, and apply for procurements up to specified dollar values (for example, up to \$250,000 for Aboriginal businesses and up to \$150,000 for small or medium enterprise and regional suppliers).

When utilising these procurement-connected policy exemptions, NSW Health agencies must:

- obtain one written quote
- meet applicable quality, safety, security and regulatory requirements
- obtain approval from financial and contracting delegates.

In addition to the steps above:

- Where the procurement is for ICT-related goods or services, eHealth NSW must approve all procurements valued over \$150,000, regardless of procurement connected policy permissions to directly engage small and medium enterprise (SMEs), Aboriginal suppliers or Australian disability enterprises.
- For procurements valued at more than \$250,000 for Australian disability enterprises, NSW Health agencies must also obtain approval by the NSW Health Chief Procurement Officer to use this exemption.
- For professional services engagements, NSW Health agencies must also use the relevant schemes listed in section [5.2.2](#).

NSW Health agencies are to consider procuring from certain suppliers for relevant procurements. For example, NSW Health agencies must first consider purchasing from a small or medium enterprise, for procurements valued at up to \$3 million, whenever procurement policies allow agencies to buy directly from one supplier.

## 5. USING EXISTING PROCUREMENT ARRANGEMENTS

### 5.1. Whole-of-government and whole-of-health contracts

NSW Health agencies must use whole-of-government or whole-of-health contracts for obtaining goods or services to which those contracts apply in accordance with the NSW Procurement Board Direction *Approved Procurement Arrangements* ([PBD 2021-04](#)).

Limited exceptions and exemptions apply, including:

- where a procurement-connected policy exemption is utilised (see section [4.6](#))
- where the goods or services are valued at \$10,000 or less (see section [4.5](#))
- to the extent of any inconsistency with a decision of Cabinet or any Cabinet Standing Committee (see section [8.4](#))
- where the NSW Health Chief Procurement Officer has approved an exemption (see section [8.9](#)).

### 5.2. Whole-of-government prequalification schemes and procurement lists

NSW Health agencies must use the whole-of-government prequalification schemes or procurement lists mandated by the NSW Procurement Board Direction in the *Approved Procurement Arrangements* ([PBD 2021-04](#)) for obtaining goods or services to which those prequalification schemes or procurement lists apply. Limited exceptions and exemptions apply.

#### 5.2.1. Minimum levels of competition

When using a whole-of-government prequalification scheme or procurement list, NSW Health agencies must comply with the specified rules and procedures including minimum levels of competition.

Where the minimum levels of competition are not stated in the whole-of-government prequalification scheme or procurement list, NSW Health agencies must still ensure that value for money is achieved, including taking the following steps:

- for goods or services valued at \$10,000 or less, no written quote is required
- for goods or services valued more than \$10,000 and less than or equal to \$250,000, at least one written quote must be obtained
- for goods or services valued at more than \$250,000, at least three written quotes must be obtained.

### 5.2.2. Procurement of Professional Services

When procuring professional services (including ICT and construction related services), NSW Health agencies must take the following steps:

- The use of relevant prequalification schemes is mandatory for professional services engagements of any value. These schemes include:
  - *Performance and Management Services Scheme* ([SCM0005](#))
  - *ICT Services Scheme* (category E only) ([SCM0020](#))
  - *Consultants in Construction up to \$9 Million Scheme* ([SCM1191](#))
  - *Consultants in Construction above \$9M Procurement List* ([SCM10611](#)).
- The NSW Health Secretary must approve any engagement with PriceWaterhouse Coopers or Scyne Advisory of any value.
- The NSW Health Chief Procurement Officer must approve all professional services engagements valued at or over \$30,000.
- All contract extensions and variations to professional services engagements of any value must also be approved by the NSW Health Chief Procurement Officer.
- Prior to finalising each engagement, the contract manager must undertake a formal post engagement evaluation.
- All documents related to the engagement, including NSW Health Chief Procurement Officer approval, approach to market documents, contracts, milestone reporting and a post engagement evaluation must be saved on PROcure, or the NSW Health Professional Services Vendor Management System (VMS), as directed for each entity by the NSW Health Chief Procurement Officer.
- Engagements valued at \$150,000 (including GST) or more must be disclosed on [eTendering](#), in line with requirements of the *Government Information (Public Access) Act 2009* (NSW) .
- Engagements for ICT-related professional services must be undertaken in line with the requirements of section [2.1.2](#).

When seeking NSW Health Chief Procurement Officer approval to proceed with a professional services engagement, NSW Health agencies must:

- justify why the work cannot be undertaken by the entities' existing staff
- undertake a business needs analysis
- indicate the source of funding
- indicate the commitment of the contracting delegate to ensure that the successful supplier signs the Supplier Confidentiality and Conflict of Interest Undertaking and Supplier Code of Conduct, and
- indicate commitment of the contracting delegate to ensure that a post-engagement evaluation is undertaken at the completion of the engagement.

NSW Health agencies must also ensure that procurements using prequalification schemes align with the additional rules of that scheme, including standard commercial frameworks where these exist.

A copy of the Supplier Confidentiality and Conflict of Interest Undertaking and Supplier Code of Conduct *must* be included with all sourcing documents and successful suppliers *must* sign a copy of the Supplier Code of Conduct prior to commencing work.

The contracting delegate must also ensure that a post-engagement evaluation is undertaken upon completion of the engagement and that this is saved on PROcure, or the NSW Health Professional Services VMS, as directed for each entity by the NSW Health Chief Procurement Officer

### 5.2.3. ICT-related Goods and Services Procurement

Procurements for ICT-related goods and services must be undertaken in line with the requirements of section [2.1.2](#).

The NSW Procurement Board has mandated that NSW Government agencies use *the ICT Services Scheme* ([SCM0020](#)) for all applicable procurements in the NSW Procurement Board Direction *Approved Procurement Arrangements* ([PBD 2021-04](#)). However, if a whole-of-government contract for supply of specific ICT-related goods or services exists (for example, Microsoft, Oracle or end-user devices) then ICT buyers must use those whole-of-government contracts in accordance with the *Approved Procurement Arrangements* ([PBD 2021-04](#)).

For engagements under the *ICT Services Scheme* ([SCM0020](#)) (except for ICT consulting and telecommunications (see below), NSW Health agencies must:

- for engagements valued up to or equal to \$250,000, obtain one written quote, or
- for engagements valued at more than \$250,000, must seek support from eHealth NSW before proceeding with the procurement.

In all cases NSW Health agencies must use the ICT Purchasing Framework form of contract or seek an exemption from the Department of Customer Services.



### ***ICT consulting commercial framework***

The *ICT Services Scheme* ([SCM0020](#)) includes an ICT consulting commercial framework which applies to ICT consulting engagements. Where the engagement is for ICT consulting services valued over \$30,000, the requirements in section [5.2.2](#) apply.

For engagements that comply with the ICT consulting commercial framework, the standard process for engagements under the *ICT Services Scheme* ([SCM0020](#)) must be followed. Where the engagement exceeds \$150,000, the matter must be referred to eHealth NSW for support.

Where engagements do not comply with the ICT consulting commercial framework, or the supplier has not accepted the framework, NSW Health agencies must:

- obtain at least three written quotes
- obtain approval from the Secretary, NSW Health or Chief Financial Officer. In obtaining approval, NSW Health agencies must outline why the work cannot be undertaken under the ICT consulting commercial framework.

### ***Procurement of telecommunications***

Telecommunications goods and services valued at more than \$100,000 must be purchased using existing panels and contracts. NSW Health agencies must, when purchasing using this contract:

- purchase the lowest price offer, or
- obtain at least three quotes and conduct a value for money assessment.

## **6. OUTSIDE EXISTING PROCUREMENT ARRANGEMENTS**

For procurements outside existing procurement arrangements, NSW Health agencies will need to approach the market. This section 6 applies to all NSW Health agencies conducting a procurement outside an existing procurement arrangement.

### **6.1. Steps to commence procurements**

#### **6.1.1. Procurements valued at \$30,000 or less**

For procurements valued at \$30,000 or less, NSW Health agencies must undertake the following steps:

<b>Estimated contract value</b>	<b>Steps</b>
<b>Less than \$10,000</b>	No written quote required. Use a PCard (if permitted).
<b>\$10,000 to \$30,000</b>	Obtain one written quote.

NSW Health agencies must still meet applicable quality, safety, security and regulatory requirements. NSW Health agencies are also to check for any additional local arrangements, including obtaining approval by the relevant persons if required by the agency.

For procurements valued at \$30,000 or less, NSW Health agencies are only required to comply with this section [6.1.1](#), the remainder of section [6](#) does not apply.

When procuring ICT-related goods and services, NSW Health agencies must:

- Use whole-of-health or whole-of-government contracts for ICT-related procurements of any value
- where the ICT-related goods or services are valued at less than \$250,000 and are not available on an existing contract, *ICT Services Scheme* ([SCM0020](#)) must be followed where goods and services are available.

### 6.1.2. Procurements valued at more than \$30,000

For procurements valued at more than \$30,000, NSW Health agencies must complete the Risk Assessment Tool available on the Procurement Portal. This tool uses the value and level of risk of the procurement to determine a procurement level of either level 1, level 2 or level 3.

#### *Procurements valued at \$250,000 or less*

NSW Health agencies are responsible for conducting their own procurements valued at \$250,000 or less (except ICT-related procurements).

#### *ICT-related procurements valued at more than \$150,000*

For ICT-related procurements valued at more than \$150,000, NSW Health agencies must refer procurements to eHealth NSW.

#### *Non-ICT-related Goods and Services procurements valued at more than \$250,000*

For non-ICT-related goods and services procurements valued at more than \$250,000, NSW Health agencies must refer procurements to HealthShare NSW (all procurement except ICT-related procurements).<sup>2</sup>

#### *Procurements valued at \$30 million or more*

In addition to the requirements for procurements valued at more than \$250,000 (or \$150,000 for ICT-related procurements), the following additional requirements apply to procurements valued at \$30 million or more:

- NSW Health agencies must consult with the Ministry of Health in the early procurement planning stages
- NSW Health Chief Procurement Officer must approve the Procurement Plan and Evaluation Report.

<sup>2</sup> This does not apply to the Ministry of Health or Health Professional Councils Authority, which may conduct procurements (except ICT-related procurements) valued at more than \$250,000 on their own behalf. This does not apply to Health Infrastructure (refer to section [2.1.3](#)).

### *Procurements to establish or renew a whole-of-government or whole-of-health contract*

Procurements to establish or renew a whole-of-government or whole-of-health contract are led by HealthShare NSW or eHealth NSW on behalf of NSW Health entities.

These procurements must follow the process for level 3 procurements.

When establishing or renewing a whole-of-government or whole-of-health contract, HealthShare NSW or eHealth NSW:

- must consult with the Ministry of Health in the early procurement planning stages
- must obtain the approval of the NSW Health Chief Procurement Officer for the Procurement Plan and Evaluation Report.

Approval of the Minister is also required before entering into a whole-of-government contract.

### **6.2. Prepare Procurement Plan**

For level 2 and level 3 procurements valued at over \$250,000, a Procurement Plan must be prepared.

For ICT-related procurements, the Procurement Plan must be endorsed by eHealth NSW.

For procurements valued at \$30 million or more, the Procurement Plan must be approved by the NSW Health Chief Procurement Officer.

### **6.3. Check if Gateway Review Process applies**

Certain capital, ICT and major recurrent projects must be registered with the relevant Gateway coordination agency as summarised in the table below:

Estimated contract value	Project type	Gateway coordination agency
≥\$5 million	ICT	Department of Customer Service
≥\$10 million	Capital	Infrastructure NSW
≥\$100 million over 4 years, or ≥\$50 million pa	Major recurrent	NSW Treasury

### **6.4. Choose procurement method and decide on approach to market method**

For all procurement levels (level 1, level 2 and level 3), NSW Health agencies need to determine which of the following methods is most suitable for the procurement:

Procurement method	Mandatory requirements
Open approach to market	Must use an open approach to market for level 2 procurements valued at more than \$250,000 and level 3 procurements of any value unless a procurement-connected policy exemption applies or the NSW Health Chief Procurement Officer approves an exemption.
Limited approach to market	When using a limited approach to market for level 1 or level 2 procurements valued at \$250,000 or less, NSW Health agencies must obtain a minimum of three quotes unless a procurement-connected policy exemption applies or the NSW Health Chief Procurement Officer approves an exemption.  Level 2 procurements valued at more than \$250,000 and level 3 procurements, must not use a limited approach to market, unless a procurement-connected policy exemption applies or the NSW Health Chief Procurement Officer approves an exemption.
Direct source and negotiation	NSW Health agencies must obtain an exemption from the NSW Health Chief Procurement Officer before directly sourcing from a supplier, unless a procurement-connected policy exemption applies.

Whilst pre-market testing can be valuable, probity and process risks must be managed.

All levels of procurement (level 1, level 2 and level 3) must identify and assemble an evaluation committee with the necessary and relevant skills to evaluate the supplier proposals.

The engagement of external probity advisers should be the exception rather than the rule. If used, external probity advisers must be selected from the approved specified personnel of prequalified probity suppliers on the *Performance and Management Services Scheme* ([SCM0005](#)).

### 6.5. Consider modern slavery risks

For level 2 and level 3 procurements, NSW Health agencies must conduct a modern slavery risk assessment at the start of the procurement process to identify and understand any modern slavery risks.

The Procurement Plan must record the outcome of the risk assessment and, if there are high modern slavery risks, identify the risk management actions that will be applied in the procurement process.

### 6.6. Obtain financial approval

NSW Health agencies must not approach the market or suppliers until the appropriate financial approval, or an in-principle commitment for funding from the financial delegate, is received.

NSW Health agencies must have financial approval before committing expenditure through a contract.

## **6.7. Prepare approach to market documentation**

For level 2 and level 3 procurements, the approach to market documentation must include:

- a description of the procurement including the nature, scope and quantity (or estimate) of the goods or services being procured
- an explanation of the procurement process that will be followed (such as whether there will be a multi-staged process)
- any dates or the period within which the goods or services are to be delivered, or the duration of the proposed contract
- any mandatory criteria or conditions of participation of suppliers, including any specific documents or certifications
- the NSW Health agency's contact details for clarifications or enquiries
- time and date of any supplier briefings (if used)
- time and date that responses are due, and how to lodge the response (such as via return email or upload to [NSW eTendering](#))
- the evaluation criteria to be used in assessing submissions
- any other terms or conditions relevant to the evaluation of submissions.

If a NSW Health agency is conducting a covered procurement (see section [2.2](#)), approach to market documentation must also include the evaluation criteria to be used in assessing submissions and, if applicable to the evaluation, the relative importance of those criteria.

### ***Formulate any mandatory criteria requirements***

Any mandatory criteria must be listed in the approach to market documentation. Mandatory criteria must not discriminate against suppliers based on business size, location or ownership, or past experience in delivering government contracts, unless approved by the NSW Health Chief Procurement Officer or there is an approved policy measure.

### ***Decide on evaluation criteria***

All procurement levels (level 1, level 2 and level 3) must have evaluation criteria against which suppliers will be assessed. For level 2 and level 3 procurements, the evaluation criteria must be published in the approach to market documentation. Evaluation criteria for level 2 and level 3 procurements are sometimes complex. Preparing a sub-criteria can be used to breakdown criteria into manageable and assessable items and, if used, must be published in the approach to market documentation.

The evaluation criteria that are in the approach to market documentation must be identical to the evaluation criteria in the Evaluation Plan.

NSW Health agencies must include specified evaluation criteria for certain procurements to meet the requirements of procurement connected policies. For example, small and medium enterprises and sustainability criteria apply for procurements valued at more than \$3 million.

NSW Health agencies must not have a mandatory criteria which requires suppliers to have experience in providing goods and services to the NSW Government or any NSW Government agency, including NSW Health agencies, without an exemption from the NSW Health Chief Procurement Officer (see section [8.9](#)).

### *Include procurement-connected policy requirements*

NSW Health agencies must comply with procurement-connected policies, including:

- [Small and Medium Enterprise and Regional Procurement Policy](#)
- [ICT/Digital SME Procurement Commitments](#)
- [Aboriginal Procurement Policy](#)
- [Small Business Shorter Payment Terms Policy](#)
- [NSW Government Resource Efficiency Policy](#).

For example, Aboriginal participation requirements apply for contracts valued at \$7.5 million or more.

### *Provide minimum time limits*

Suppliers must be provided with reasonable time to respond to any approach to market, consistent with NSW Health agencies' own reasonable needs.

For covered procurements, minimum time periods must be assessed against the EPP Direction which may require minimum time limits of 10 or 25 calendar days depending on factors such as whether the procurement was published in the NSW Health Annual Procurement Plan.

## **6.8. Prepare evaluation plan**

Level 2 and level 3 procurements must prepare an Evaluation Plan.

## **6.9. Prepare proposed contract**

The proposed contract needs to be 'fit for purpose'. This means that the form of contract proposed is suitable for the type of goods or services being procured, as well as the value and level of risk of the procurement.

For advice on legal matters (such as reviewing contract terms), NSW Health agencies must contact their local legal team (if the agency has a local legal team) and/ or seek external legal expertise from the [NSW Government Legal Services Panel](#) or the [Regional and Rural Legal Services Panel](#) (as appropriate). If it would be of assistance, the Ministry of Health's Legal unit can assist in identifying an appropriate firm from the relevant panel.

NSW Health agencies must comply with the NSW Health Policy Directive *Significant Legal Matters and Management of Legal Services* ([PD2017\\_003](#)), including complying with requirements to notify the Ministry of Health General Counsel when a significant legal matter arises.

Contracts must not cover a total period exceeding five years (including extension options) without the approval of the NSW Health Chief Procurement Officer.

### **6.9.1. ICT-related contracts**

All procurement levels (level 1, level 2 and level 3) must use the [ICT Purchasing Framework](#) when buying ICT-related goods and services.

The ICT Purchasing Framework comprises the:

- Core& contracts
- MICTA/ICTA contracting framework.

Level 2 and level 3 procurements assessed as medium to high risk or valued at \$1 million or more must use the MICTA/ICTA contract templates. The MICTA/ICTA contracting framework is mandated for use by NSW government agencies for all new procurements on and after 1 September 2021.

A new procurement does not include a contract extension which is permitted under the terms of an existing contract.

### **6.9.2. Human Services contracts**

All procurement levels (level 1, level 2 and level 3) must use the prescribed template contract, the NSW Government Human Services Agreement when procuring human services from a non-government agency.

## **6.10. Obtain approval of Evaluation Plan**

For level 2 and level 3 procurements, NSW Health agencies must have the Evaluation Plan approved by the procurement delegate before supplier responses are opened or accessed. Any amendments to the Evaluation Plan must be approved by the procurement delegate.

For ICT-related procurements valued above \$250,000 eHealth NSW will endorse the Evaluation Plan.

## **6.11. Obtain approval to commence procurement**

For level 2 and level 3 procurements, NSW Health agencies must obtain approval from the procurement delegate to release the approach to market documentation before issuing the documents to suppliers.

## **6.12. Release approach to market documentation**

Depending on the approach to market, NSW Health agencies must give advance notice of a procurement opportunity to all potential suppliers, at the same time, to ensure equal access of opportunity.

NSW Health agencies must publish all open approaches to market (such as requests for tender) electronically on [NSW eTendering](#).

## **6.13. Conduct approach to market process**

The approach to market process must be conducted in accordance with the information provided to suppliers in the approach to market documentation, and the requirements in

sections [6.13](#) to [6.18](#) must be read in that context. Any changes to the approach to market process must be notified to the procurement delegate.

NSW Health agencies must provide information or a pre-approach to market briefing when a reasonable request is made by any supplier. If a supplier information briefing is held, NSW Health agencies must state whether attendance is mandatory.

All communications with suppliers must be made through a single point of contact nominated in the approach to market documentation.

In responding to clarification questions, NSW Health agencies:

- must answer by way of approach to market addenda issued to all prospective suppliers via [NSW eTendering](#) (or alternative means if NSW eTendering is not used) if the response is intended to change the approach to market documentation
- must not give information that may give a potential supplier an unfair advantage
- must not discuss or disclose any other potential supplier's confidential or commercial information.

NSW Health agencies must receive responses through NSW eTendering if the approach to market was published on NSW eTendering.

NSW Health agencies must notify suppliers when their approach to market response has been received to confirm receipt. All potential supplier responses must be treated fairly and confidentially.

NSW Health agencies must manage late responses in accordance with the approach to market documentation. The reasons for accepting a late response must be documented, and included in the Evaluation Report.

If using a limited approach to market and the selected suppliers have not responded in a timely manner, NSW Health agencies must obtain approval from the procurement delegate before proceeding with fewer than three quotes.

If NSW Health agencies seek additional quotes under the same terms as the original request for quote, NSW Health agencies must provide the same documentation, clarification information and timeframe for suppliers to respond.

#### **6.14. Evaluate responses and select suppliers**

NSW Health agencies must use the initial screening process specified in the Evaluation Plan, if applicable.

NSW Health agencies must manage alternative submissions in accordance with the approach to market documentation and only accept alternative submissions if the alternative submission provides a demonstrable advantage to the NSW Health agency.

Before considering an alternative submission, NSW Health agencies must ensure the supplier has met any conditions of participation in the approach to market documentation such as providing a conforming response.



When shortlisting potential suppliers, the evaluation criteria must be applied fairly and equitably. Once shortlisted, NSW Health agencies may also request any additional information such as reference checks and other forms of due diligence.

After being screened and/ or shortlisted, NSW Health agencies must evaluate supplier responses in accordance with the approach to market documentation and the Evaluation Plan and based on the information provided in the supplier's response.

All evaluation decisions must be recorded, including justifications for eliminating or shortlisting responses based on the evaluation criteria.

Where clarification questions are issued to address uncertainties, inconsistencies or ambiguities of a responses, a written record must be kept of any such clarifications.

For negotiations during level 2 and level 3 procurements, the reasons for conducting negotiations and summary of negotiations and negotiation outcomes must be recorded in the Evaluation Report. Any changes to contract terms that are proposed during negotiations, must be approved by the procurement delegate.

For level 2 and level 3 procurements, NSW Health agencies must prepare an Evaluation Report using the Evaluation Report Template (or agency's equivalent).

The Evaluation Report must be approved by the procurement delegate for level 2 and level 3 procurements. For procurements valued at \$30 million or more, the Evaluation Report must also be approved by the NSW Health Chief Procurement Officer.

Where the procurement is for ICT-related goods and services valued at over \$250,000, the Evaluation Report must be endorsed by eHealth NSW.

### **6.15. Obtain approvals to award contract**

Before awarding the contract, all procurement levels (level 1, level 2 and level 3) must:

- obtain approval from the financial delegate that funds are available for the contract price
- obtain approval to award the contract from the contracting delegate. The submission for final approval should include the final Evaluation Report.

Level 3 procurements must identify the benefits of contract award when seeking approval.

### **6.16. Award contract**

For all procurement levels, the terms which comprise the contract must be clearly identifiable.

#### ***Issue and execute contract***

Once all financial delegate and contracting delegate approvals are in place, in order to create a contract for all procurement levels, appropriate contract formation steps must be taken between the NSW Health agency and the supplier.

For all procurement levels, NSW Health agencies must issue and execute the contract with the successful supplier.

NSW Health agencies must retain a copy/ copies of the contract executed by all parties.

### *Disclose contract on NSW eTendering and PROcure*

For all procurement levels, NSW Health agencies must:

- disclose all contracts valued at \$150,000 (including GST) or more on [NSW eTendering](#) within 45 working days of becoming effective
- save all contracts valued at \$150,000 (including GST) or more, and associated documents on [PROcure](#).

### **6.17. Notify and debrief unsuccessful suppliers**

NSW Health agencies must notify unsuccessful suppliers in writing. NSW Health agencies must provide a debrief if a reasonable request is made by an unsuccessful supplier.

Debriefs must not:

- disclose any other supplier's conditional or commercial information, including price structures or funding models, or
- become a debate about individual scores for individual categories.

If, following evaluation, there are no complying responses, no responses that provide value for money or negotiations cannot be successfully completed on terms acceptable to NSW Health, the approach to market can be terminated. The decision to terminate an approach to market must be approved by the procurement delegate.

### **6.18. Keep records and identify benefits and lessons learnt**

NSW Health agencies must, at the conclusion of the approach to market process, confirm all records are up to date, are saved into the NSW Health agency's record management system, and ready to handover to the contract management agency.

For level 3 procurements, information on benefits delivered throughout the procurement process and ongoing delivery actions must be recorded in the Evaluation Report and communicated to the contract manager.

## **7. CONTRACT MANAGEMENT**

Contract management is the process of managing executed contracts and is a continuation of the procurement process outlined above. This section 7 requires all NSW Health agencies to conduct certain minimum contract management activities depending on the contract value and/ or method of procurement.

### **7.1. Managing contracts valued at less than \$30,000**

For contracts valued at less than \$30,000, active contract management is not required except to confirm that the goods and services are received on time and for the agreed price.

## **7.2. Managing contracts established using existing procurement arrangements**

Contracts established using existing procurement arrangements require operational contract management at the local level to:

- confirm that the goods and services are received on time and for the agreed price
- confirm that the goods and services comply with the terms or rules of the existing procurement arrangement
- raise any minor issues with the supplier in the first instance. Issues which are ongoing or significant should be reported to the category manager or the [NSW Procurement Service Centre](#).

Where the contract is for a professional services engagement, additional requirements apply:

- The engagement must be saved into a whole-of-health system, as prescribed by the NSW Health Chief Procurement Officer.
- All documents relating to the procurement must be kept within this system.
- Achievement of milestones and payments must be recorded.
- A formal post-engagement evaluation must be undertaken and saved in the system.

## **7.3. Managing contracts established outside existing procurement arrangements**

Contracts established outside existing procurement arrangements for all procurement levels (level 1, level 2 and level 3), must be managed in accordance with this section 7.3 onwards.

Whole-of-health contracts and whole-of-government contracts managed by NSW Health agencies must also be managed in accordance with this section 7.3 onwards.

### **7.3.1. Contract set-up**

NSW Health agencies must work with HealthShare NSW or eHealth NSW when implementing whole-of-government or whole-of-health contracts at the agency level.

For level 2 and level 3 procurements, the NSW Health agency who undertook the process of procuring the goods or services must handover and review the executed contract with the contract manager, in consultation with the procurement manager or category manager (or local equivalent) and the wider contract implementation team as necessary, to:

- confirm all contractual documents have been received and properly executed
- review and record the expected outcomes of the contract, including contract terms and requirements
- confirm benefits delivered through the sourcing activity and any ongoing activities to ensure full benefits realisation over the life of the contract

- ensure the contract (if valued at \$150,000 (including GST) or more) is registered on PROcure as appropriate and that relevant documents are uploaded to the relevant system
- ensure all records are saved to the contract owner's record management system and passed over to the contract management agency (if not the same agency).

All assets, including newly purchased or leased assets must be recorded on the NSW Health Asset Register in [AFM Online](#) in accordance with the relevant state-wide asset naming standard that applies to the service class.

The asset must also be included in the NSW Health agency's Asset Management Plan.

NSW Health agencies must also classify the supplier using the Supplier Segmentation Framework if the total aggregated contract spend with that supplier (including the new contract) is \$5 million or more per annum to determine the 'supplier type' as either:

- Tactical
- Emerging
- Legacy
- Strategic.

To determine the aggregated annual spend with a supplier, NSW Health agencies must add the annual value (or estimate) of the new contract to the aggregated annual spend with the supplier across all current contracts with the procuring NSW Health agency.

For contracts with emerging, legacy and strategic suppliers, NSW Health agencies must prepare a Contract/Panel Management Plan. Anticipated contract benefits for emerging, legacy and strategic suppliers must be recorded in the Contract/Panel Management Plan and benefit delivery tracked against forecasts using a consistent methodology.

If a kick-off meeting is arranged, the contract manager and supplier must attend the meeting.

### 7.3.2. Administer contract

Contracts must be administered in accordance with their terms and conditions.

NSW Health agencies must ensure suppliers, of all types, maintain all required insurances, certifications, licences or other mandatory qualifications throughout the life of the contract.

To better manage contract variations whilst administering the contract, NSW Health agencies:

- must comply with the variation regime of the contract
- must not use an extension option to avoid complying with the EPP Direction
- must seek legal advice prior to agreeing to material variations from the NSW Health agency's local legal team (if the agency has a local legal team) and/ or the [NSW Government Legal Services Panel](#) or the [Regional and Rural Legal Services Panel](#) (as appropriate)
- must keep relevant records related to the contract variation

- must obtain appropriate approval for the variations from the contracting delegate
- must obtain appropriate approvals for the variations from the financial delegate
- must obtain NSW Health Chief Procurement Officer approval to vary the contract if the total tenure will be more than five years, or to extend contracts whose contract terms exceeds five years, on the basis that exceptional circumstances apply
- must obtain NSW Health Chief Procurement Officer approval for variations or extensions of any value for professional services engagements
- must obtain approval from the NSW Health Chief Procurement Officer if the proposed variation is outside the scope of the original statement of work.

Once the contract variation is approved, NSW Health agencies must document:

- confirmation that the suggested variations are within the scope of the contract's statement of work
- expected benefits to NSW Health or the NSW Health agency directly arising from the prospective variations
- any likely detrimental effects from accepting the variations (for example, additional cost to NSW Health).

NSW Health agencies must record contract variations on [PROcure](#), and, for contracts valued at more than \$150,000 (including GST), disclose them on [NSW eTendering](#) if there is a material change to the contract term or price.

Many contracts will include a price review and calculation mechanism, and this must be used when considering and calculating a revised price.

NSW Health agencies must track extension dates and expiries for contracts with all supplier types and ensure there is a plan for maintaining supply or transitioning out of a contract.

The decision as to whether a contract is to be extended (if there are extension options available), renewed using a new procurement process, or allowed to lapse must be made early enough to ensure there is sufficient time to put in place the planned expiry strategy prior to the contract end-date.

For contracts managed by HealthShare NSW and eHealth NSW, decisions to lapse, renew or extend contracts must be made at least 12 months prior to expiry, with relevant approvals.

### **7.3.3. Monitor contract**

NSW Health agencies must monitor the supplier's performance and contract compliance for all supplier types.

For emerging, legacy and strategic suppliers, there must be processes in place for NSW Health agencies and end-users to report contract non-compliance or issues.

NSW Health agencies must document all instances of non-compliance, and communications addressing non-compliance, in writing.

If the supplier is in breach of their obligations and a NSW Health agency is considering invoking dispute resolution mechanisms (such as to issue a formal notice of dispute or to

commence third party mediation), NSW Health agencies must seek legal advice before proceeding by contacting the local legal team (if the agency has a local legal team) and/ or seeking external legal expertise from the [NSW Government Legal Services Panel](#) or the [Regional and Rural Legal Services Panel](#) (as appropriate).

NSW Health agencies must comply with NSW Health Policy Directive *Significant Legal Matters and Management of Legal Services* ([PD2017\\_003](#)), including complying with requirements to notify the Ministry of Health General Counsel if a significant legal matter arises.

### ***Manage financial administration and track expenditure***

Contract spend must be tracked and monitored over the life of contracts with emerging, legacy and strategic suppliers. NSW Health agencies must also reconcile contract spend against the approved expenditure commitment or the purchase order (if applicable).

If expenditure is likely to exceed the approved contract value, NSW Health agencies must:

- obtain approval from the financial delegate for the increased contract spend
- update [PROcure](#) and the GIPA contract register on [NSW eTendering](#) if the contract is valued at \$150,000 (including GST) or more.

In association with spend tracking, NSW Health agencies must consider ongoing demand across contracts with strategic suppliers.

Qualitative and quantitative benefits included in the Contract/Panel Management Plan and/ or the Benefits Realisation Plan must be tracked over the life of contracts with emerging, legacy and strategic suppliers. The defined benefits measurement methodology must be applied consistently, with any changes recorded and justified.

### ***Continuously monitor and manage risks***

NSW Health agencies must actively identify and manage risks throughout the term of contracts with emerging, legacy and strategic suppliers. In particular, regular risk monitoring must be conducted where there are patient, public or workplace health or safety risks associated with the contract.

Contract or category managers must analyse and monitor their contract supply chains with strategic suppliers to better understand these risks, and to help identify and plan for supply bottlenecks or disruptions.

### **7.3.4. Manage and monitor supplier performance and relationship**

The contract or category manager must monitor and regularly review contractual performance measures for emerging, legacy and strategic suppliers.

The contract or category manager must also facilitate contract review meetings with emerging, legacy and strategic suppliers. Contractual performance measures must be tracked in accordance with the contract, and issues or concerning trends discussed with the supplier at performance review meetings.

For contracts with strategic suppliers, end-user satisfaction must be measured.

Any ongoing risks or issues that arise with a supplier contracted using the ICT Procurement Framework where a formal dispute may arise must be escalated to eHealth NSW for their advice and support.

Contracts valued at \$3 million or more may have supplier and/ or agency reporting requirements arising from procurement-connected policies. For these contracts, NSW Health agencies must check for procurement-connected policy reporting requirements.

Any incident of modern slavery identified in a NSW Health supplier's supply chain must be reported to the NSW Health Chief Procurement Officer.

### **7.3.5. Close contract**

NSW Health agencies must conduct a final performance review with emerging, legacy and strategic suppliers prior to contract closure.

Like the Transition-in Plan, a Transition-out Plan may be required to minimise any impacts on parties at the end of a contract. In some cases, this plan or a regime for transitioning-out may already be required under the contract (and must be followed where it is included).

For contracts with all supplier types (tactical, emerging, legacy and strategic), NSW Health agencies must finalise the contract in accordance with the agreed terms.

The Contract/Panel Management Plan must be reviewed and updated with final contract spend and usage data for contracts with emerging, legacy and strategic suppliers.

NSW Health agencies must also conduct a final reconciliation of benefits delivered through any contract with emerging, legacy or strategic suppliers, by finalising the benefits realisation register in either the Contract/Panel Management Plan or the Benefits Realisation Plan as applicable.

NSW Health agencies must check that any end-of-contract procurement-connected reporting requirements are met.

At the conclusion of any contract, NSW Health agencies must confirm that all records are up to date and saved into the relevant agency's record management system.

These records must cover:

- contract planning documents
- sourcing documents including the request for quotation or request for tender, clarifications, supplier responses, Evaluation Report and any supporting documentation
- conflict of interest declarations and any other probity-related documentation
- signed and executed contracts and variations
- performance management records and supplier reports
- financial records and reconciliation of contract expenditure
- post-engagement evaluations for professional services engagements.

## 8. OTHER RELEVANT CONSIDERATIONS

This section 8 applies to the procurement of all goods and services, regardless of the procurement level (level 1, level 2 or level 3) or supplier type (tactical, emerging, legacy or strategic).

### 8.1. Legal

NSW Health agencies must comply with NSW Health Policy Directive *Significant Legal Matters and Management of Legal Services* ([PD2017\\_003](#)), including complying with requirements to notify the Ministry of Health General Counsel when a significant legal matter arises.

For advice on legal matters (such as reviewing contract terms, managing material contract variations/ non-compliance), NSW Health agencies must contact their local legal team (if your agency has a local legal team) and/ or seek external legal expertise from the [NSW Government Legal Services Panel](#) or the [Regional and Rural Legal Services Panel](#) (as appropriate). If it would be of assistance, the Ministry of Health's Legal unit can assist in identifying an appropriate firm from the relevant panel.

### 8.2. Unsolicited proposals

All unsolicited proposals must be referred to the Department of Premier and Cabinet for assessment and ongoing liaison. Such proposals must not be used as a substitute for routine competitive procurement actions.

### 8.3. Public-private partnership arrangements

For public-private partnerships, in addition to the [NSW Public Private Partnership Policy and Guidelines](#), agencies must encourage private partners or contractors to use existing whole-of-government and whole-of-health procurement arrangements where possible.

### 8.4. Procurements approved by Cabinet or a Cabinet Standing Committee

In undertaking a procurement approved by Cabinet or a Cabinet Standing Committee, NSW Health agencies must apply this Policy Directive, the NSW Government [Procurement Policy Framework](#), NSW Procurement Board Directions and policies of the Board to the extent they are consistent with the Cabinet decision.

If the procurement is covered by the EPP Direction, the NSW Health agency must comply with the enforceable procurement provisions when undertaking the procurement.

### 8.5. Emergency procurements

Before NSW Health agencies conduct an emergency procurement, approval must be obtained from both:

- the Secretary, NSW Health or their nominee under section 4(1) of the *Public Works and Procurement Regulation 2019* (NSW), and



- the financial delegate with authority under section 9.7(1)(b) of the *Government Sector Finance Act 2018* (NSW) to commit or incur expenditure for the procurement of goods, services and equipment to support the State's response to an emergency to a value sufficient to meet that particular emergency.

Written confirmation of the emergency procurement approval must be arranged as soon as practicable following the emergency procurement, if it cannot be provided beforehand.

Where an emergency procurement is authorised, the NSW Health Chief Procurement Officer must be notified as soon as possible. NSW Health agencies must not procure goods or services in excess of those necessary to meet the immediate needs of the emergency.

### 8.6. Foreign exchange risks

All NSW Health agencies are required to manage their foreign exchange risks in accordance with the *NSW Government Financial Risk Management Policy* ([TPP21-14](#)). This policy applies when agencies:

- buy or sell, or intend to buy or sell, goods or services in foreign currency
- buy or sell, or intend to buy or sell, goods that are ultimately sourced from overseas or foreign companies/suppliers
- have actual or budgeted income, expenses, assets or liabilities that are affected by changes in the value of foreign currencies.

Any procurements valued at \$500,000 or more that meet any of the above criteria must be reported to the Ministry of Health [Financial Systems Performance Branch](#) and the [Strategic Procurement Branch](#).

### 8.7. Disposals and donations

The disposal of goods and assets that have reached the end of the serviceable life or are no longer required by NSW Health agencies must be managed to achieve value for money and meet transparency and probity requirements. Disposals must also comply with all applicable environmental standards and regulations, work, health and safety requirements, and any local council regulations.

Prior to commencing disposal activities, NSW Health agencies must obtain approval from the appropriate procurement delegate confirming:

- that the goods are suitable for disposal
- the estimated present value of the goods is acceptable.

NSW Health agencies must use the value of the goods to be disposed of to determine the disposal process to be followed, rather than the cost of the disposal.

When conducting disposals by quotations, NSW Health agencies must ensure:

- that disposal specifications and requirements are provided equally to all suppliers invited to quote
- the supplier evaluation criteria is established prior to receiving quotes

- 
- that proper processes are followed for closing managing quotes, awarding the disposal contract and finalising the agreement.

The disposal of assets to charitable bodies must be approved by the relevant delegate in line with the NSW Health agency's delegations manual.

### **8.8. Modern slavery**

From 1 January 2022, amendments to the *Public Works and Procurement Act 1912* (NSW) require that NSW Government agencies and other entities must take reasonable steps to ensure that the goods and services they procure are not the product of modern slavery.

### **8.9. Exemptions to this document**

Exemptions will be granted by the NSW Health Chief Procurement Officer only where exceptional circumstances apply.

When seeking an exemption, NSW Health agencies must:

- demonstrate how value for money will be achieved through the non-compliant process
- when seeking to buy alternatives to contracted goods or services, provide a comparative assessment of the alternate products or approach that addresses whole-of-life costs, interoperability, risks and benefits
- confirm a funding source with approval from the financial delegate
- obtain endorsement of the approach from the procurement delegate
- obtain endorsement of the approach from the relevant category manager (if applicable)
- obtain endorsement from HealthShare NSW or eHealth NSW prior to approaching the NSW Health Chief Procurement Officer.