



HENRY DAVIS YORK  
LAWYERS

## PUBLIC SECTOR INSIGHT

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# Substantial reforms to NSW Government procurement announced

Government procurement in NSW may soon change, following a discussion paper released by the NSW Department of Finance & Services last week.

The discussion paper invites comments on its proposals for a new procurement framework. The NSW Government is looking to overhaul the current system that has often been criticised as outdated, unnecessarily complex, overridden with red tape and hampering opportunities for businesses, especially small and medium enterprises.

Following consultation it is expected that amendments to the Public Sector Employment and Management Act 2002 and the Public Sector Employment and Management (Goods and Services) Regulation 2010 will be brought to Parliament in 2012 to give effect to the changes.

### The current situation

The NSW Government procurement framework combines a centralised procurement system together with a range of decentralised procurement arrangements.

The State Contracts Control Board (**SCCB**) is responsible for the purchase and disposal of goods and services on behalf of the public sector service, while agencies buy goods and services from suppliers that are party to SCCB 'whole-of-government' contracts and agency-specific contracts. Some agencies may make purchases up to a certain level without SCCB approval, and indeed, many agencies have their own power to undertake procurement activities independently.

SCCB contracts are typically established as 'panels' or 'standing offer' arrangements set up for a fixed term, and include standard terms and conditions and additional terms outlined in separate customer contracts with individual suppliers. Those agencies with an independent procurement power may utilise the SCCB standard terms and conditions, or they may have their own standard terms and conditions.

### Who does this affect?

All NSW Government Principal Departments, agencies and suppliers of goods and services to NSW Government, especially small and medium enterprises.

### Highlights

- The current NSW Government procurement framework has been substantially modified over the decades, is complex and arguably no longer practical in serving the needs of Government or the business community.
- The NSW Department of Finance & Services is working towards a more streamlined and unified approach to public sector procurement. It is also seeking to encourage competition and develop further opportunities for suppliers.

Most centralised NSW Government procurement is currently undertaken by means of open tendering processes, with a view to establishing whole-of-government, long-term panel contracts. This 'one-size fits all' approach is required by the *Public Sector Employment and Management (Goods and Services) Regulation 2010*, unless an exemption applies.

At the agency level, there is often significant variation in the procurement arrangements between different agencies. Some large agencies have centralised procurement teams while others have decentralised procurement functions.

## Concerns

Calls have been made for a more flexible approach for procuring goods and services in the NSW public sector. Not only do panel contracts over long periods limit the Government's ability to achieve value for money over the long term and take advantage of changes in the market, the processes for establishing the panels often discourage many suppliers from bidding due to their complexity and length.

Concerns about NSW Government procurement have also been identified by the Independent Commission Against Corruption. Its report, *Corruption Risks in NSW Government Procurement* states:

- The NSW public sector procurement system is complex and difficult to apply to varying procurement scenarios.
- Accessing practical information to support practitioners in their procurement activities and decision-making is difficult.
- Central agencies fail to provide leadership and support to individual organisations, procurement practitioners and suppliers.
- There is a lack of compliance with procurement policy and procedures and an absence of effective sanctions within the system.

## Proposed reforms

The NSW Department of Finance & Services has stated that it recognises the need to take action and has proposed a new governance structure and operating framework for NSW Government procurement.

One of its major proposed changes is to abolish the SCCB and to replace it with the NSW Government Procurement Board. Membership will be drawn from the Directors General of the NSW Government's nine Principal Departments.

The Procurement Board will have responsibility for overseeing the Government's procurement system, setting policy and ensuring compliance. It will also have statutory powers to issue directions to agencies, and accredit agencies to undertake their own procurement of goods and services.

Unlike the SCCB, the Procurement Board will not primarily be a contracting body (but will have reserve power to arrange contracts, if required). Its key function will be to make decisions on what categories of goods and services should be procured centrally, and it will charge specific agencies with leading that central procurement role.

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Principal Departments and certain cluster agencies will be responsible for sourcing and contract management after being accredited by the Procurement Board. The following will apply:

- Where an agency is the largest spender in a particular procurement category and holds the necessary specialist expertise, it may be designated as the whole-of-government lead agency for that category.
- Where a whole-of-government contract or opportunity for a contract does not exist, agencies will be responsible for managing their own procurement.
- Agencies with their own legislative powers to procure goods and services will retain them, but these procurement activities will be subject to the Procurement Board's overarching supervision.

The NSW Department of Finance & Services will be the category manager for those categories that remain best-managed by a central function (usually highly commoditised goods, e.g. energy, motor vehicles, certain information technology purchases and travel). It will continue to perform a range of functions centrally, such as policy development and compliance.

### **Future steps: what's next?**

The NSW Government has stated that it has several goals in its proposed new approach to public sector procurement. These include:

- achieving better value for money and budgetary outcomes
- fostering procurement as a business enabler through planning and oversight with a Government-wide strategic approach
- reducing administration costs and duplication of the procurement function across Government, and
- cutting red tape, improving competition and simplifying access to Government business for the supplier community.

The NSW Government Procurement Discussion Paper is available at <http://haveyoursay.nsw.gov.au/procurement>. Comments on the proposals can be provided to the NSW Department of Finance & Services by Wednesday 29 February 2012.

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