



Procurement Policy

As at 2007

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Procurement Policy

NSW Government Policy (TPP04-1, July 2004) is an overarching framework for all government procurement and applies to all government departments, statutory authorities, trust and other government entities. State Owned Corporations under the *State Owned Corporations Act* are exempt except they are encouraged to adopt aspects of the Policy consistent with their corporate intent.

Policy Objective and Key Principles

The fundamental objective of the NSW Government Procurement Policy is to ensure the government procurement activities achieve best value for money in supporting the delivery of government services.

The Policy emphasizes agency accountability for outcomes, with greater upfront planning and stronger linkage with the State Budget process prior to allocation of capital funding.

Key principles underpinning the Policy are:

- Value for money, being the benefits achieved compared to whole-of-life costs
- Efficiency and effectiveness
- Probity and equity and
- Effective competition.

Policy Strategies

Strategies underpinning the Procurement Policy are aimed at achieving resource allocation and clear agency accountability through:

- A whole-of-government approach
- Ethical and sound procurement practice
- Effective procurement capacity and competence
- Appropriate support of the Government's economic, environmental and social objectives and
- Monitoring of and improvement in agency performance.

Key elements of the NSW Government Procurement Policy introduce:

- Mandatory business case Gateway reviews for complex and innovative procurement

- An Agency Accreditation Scheme for capital works procurement
- Greater monitoring of major capital works by NSW Treasury.

Policy Framework

The NSW Government Procurement Policy is consistent with the Government's total asset management, infrastructure, planning and delivery framework. The Policy links with the State Budget process to deliver better budgetary outcomes through agencies' Results and Services Plan and saving targets.

Key elements include:

- A ten step online guide to the procurement process to assist agencies' implementation of the Procurement Policy. The guide is tailored for each of four main categories of procurement:
 - Construction
 - Goods and Services
 - Information and Communications
 - Accommodation and Property

For further information, associated documents and links to appropriate information go to the NSW Treasury Website.

The Policy Structure

NSW legislation makes provision for various related policies to be developed:

- NSW Treasury Policy on Capital Expenditure – Budget Paper No. 4 (see <http://www.treasury.nsw.gov.au/procurement/procure-intro.htm>)
- NSW Government Procurement Policy (***TPP 04-1, July 2004***). This Policy and Guidelines Paper outlines a simplified Procurement Policy and associated implementation processes for NSW Government agencies. Treasury Circular *TC04/07* has been issued in conjunction with this Paper, conveying the Government's endorsement of the Policy and its status as a Treasurer's Direction.

The Legal Framework

Procurement authority and processes in New South Wales derive from the following:

- Constitutional Acts
- *Public Finance and Audit Act 1983 S13*
- *Public Sector Employment and Management Act 2002*

- *Public Sector Management (Goods and Services) regulation 2000*
- Treasury Directions (as issued from time to time)

Commonwealth & NSW Constitutional Acts

The Australian Constitution Act 1900:

- Established the division of legislative powers between the Commonwealth and the States
- Established the State Laws must be consistent with the laws of the Commonwealth.

The Constitution Act (NSW) 1902 provides the source of power for:

- The Governor
- The State Parliament
- Ministers
- The Treasury

Public Finance and Audit Act 1983

The *Public Finance and Audit Act, 1983*, which came into effect in 1984, is aimed at enhancing accountability and efficient use of public monies. By virtue of the Public Sector Employment and Management Act, 2002, the Head of an Authority is responsible for the general conduct and efficient, effective and economical management of the Authority. There is also a responsibility under the Public Finance and Audit Act to ensure that an effective system of internal control is in operation.

Section 9 of the Act provides for Treasurer's Directions to be issued from time to time. These Directions cover accounting and related financial principles, practices and procedures to be observed by officers of authorities in the administration of the financial affairs of the State.

Public Finance and Audit Act 1983 – Section 10

This Section of the Act contains the Treasurer's expenditure control authority.

The Treasurer may, from time to time, issue a Treasurer's expenditure control authority regulating the expenditure of money from the Consolidated Fund. "Consolidated Fund" means the fund formed as referred to in section 39 of the *Constitution Act 1902*.

A Treasurer's expenditure control authority may:

- Be a standing authority regulating the expenditure of money in general terms
- Be limited as to the period during which it may operate to regulate the expenditure of money

- Be limited as to the nature of the transactions in respect of which money may be expended
- Be limited to a particular transaction or series of transactions
- Be contained in the Treasurer's directions or in a separate instrument.

A reference in this section to the regulation of the expenditure of money includes a reference to the commitment of money for expenditure.

Public Finance and Audit Act 1983 – Section 12

This section of the Act refers to commitment of expenditure.

- Expenditure shall be committed or incurred by an officer of an authority only within the limits of a delegation in writing conferred on an officer by a person entitled to make a delegation.
- An officer of an authority who commits or incurs expenditure shall be responsible for the exercise of due economy.
- An officer of an authority must not, without the authorization of the Treasurer, incur any liability that would result in a payment out of the Consolidated Fund in excess of the amount to be provided out of the Consolidated Fund in accordance with the Appropriation Act or the Public Finance and Audit Act 1983.
- Nothing in this or any other section of the Public Finances and Audit Act 1983 prevents an officer of an authority from being authorised to commit or incur expenditure that is legally available for the use of any authority.

Please consult your Agency's delegations Manual for specific information about delegations, authorities and values.

Public Finance and Audit Act 1983 – Section 13

This section of the Act deals with the payment of Accounts.

An officer of an authority shall not authorise the payment of an account:

- Unless the account has been approved for payment by a person who is duly authorised to approve the payment under Section 12 (1), or
- Otherwise than in accordance with the Treasurer's directions.

Public Sector Employment and Management Act 2002 – Chapter 7 – Goods and Services:

This section of the Act covers the establishment of the State Contracts Control Board (SCCB), the provision for regulations to acquire and dispose of goods or services for the Public Service and referral of complaints to the Board regarding competitive neutrality in tendering. **See Section 5.1.3**

The Public Service is represented by those agencies listed in schedule 1 of the Act.

Premier's Memoranda set out Government policy and/or procedural requirements on a wide range of matters

Public Sector Management (Goods and Services) Regulation 2000

Public Sector (Goods and Services) Regulation 2000 sets out the role of the State Contracts Control Board and requires:

- That competition to supply goods and services is maximised
- That probity is maintained in tendering
- That the tender selected should be the most advantageous to the Public Service.

Identifying and Complying with Legislation

It is important that you are familiar with relevant legislation. If an issue arises and you are unclear about how to interpret the legislation, clarify the issue with an appropriate person within your organisation. Where you believe there may be possible breaches of any of the legislation outlined, discuss your concerns with your supervisor or manager immediately.

Purchase Orders, Content and Format

A purchase order is the official document used to authorize and record the purchase of goods and services by the agency. It will often be the prime reference confirming the contractual situation between the purchaser and the supplier.

Purchase Order content

The most reliable means of conveying details of requirements to suppliers is to issue a purchase order. Purchase orders may be a 'hardcopy' of the order, but electronic commerce or electronic data interchange (EDI) is fast becoming the 'norm' where a 'soft copy' of the order is electronically transmitted to the supplier.

All types of purchase orders will contain, as a minimum, the following:

- Supplier's details
- Description of goods and services
- Quantity
- Price
- Delivery details
- Contact name

- Purchase order number
- Invoice mailing instructions
- Signature of authorized person
- Account code or job number
- Trading terms

Terms and conditions of the purchase order are often overlooked. Must be notated in body of order if different.

Supplier's details

This area of the order contains information about the supplier including:

- The supplier's name
- The supplier's address (usually postal)
- The supplier's ABN (Australian Business Number) – required for GST)

Description of goods or services

In basic purchasing the description of goods or services will often refer to an item that has previously been supplied:

- Under an existing arrangement or standing offer, or
- A basic off-the-shelf item that has been described during a quotation process.

Descriptions may include brief details of the goods together with a supplier's part number.

Quantity

Every order contains the number of units of the goods or services to be supplied. Issues to consider in this area are:

- Unit of issue (is the item normally sold as a single unit or in packs?)
- If the unit of measure is not 'each' or 'only' and involves some type of measure, has the type of measure been clarified with the supplier (e.g. is it to be imperial or metric?)

It must be absolutely clear to suppliers what quantity you really want.

Price

The accepted price in a basic purchase will normally be a firm price with no provision for variation. It is important to be clear about what the price includes (e.g. whether the price includes the cost of delivery or not).

Delivery details

Many purchasing transactions fail to meet customer requirements because detailed delivery and invoicing instructions were not shown clearly on the face of the purchase order. As a consequence, goods are delivered to wrong locations, invoices are lost and both the customer and the supplier suffer avoidable delays in completing the contract.

Information about delivery should cover:

- Delivery location (usually differs from address for invoices)
- Any restriction on deliveries (security requirements or access times)
- Details of materials handling equipment, such as forklift truck, that may be required for large or special deliveries
- Information about who should be contacted before a delivery is made if the delivery address is inaccessible or unattended.
- Instructions that a delivery docket should accompany goods (this is the document which is used to confirm receipt of goods which the delivery person usually requires to be signed by the receiving officer as acknowledgement of receipt of consignment)
- Whether the goods are delivered Free Into Store (FIS) or Free on Board/Truck (FOB/FOT). The difference here is that under FIS, the supplier is liable for the goods until someone in the buyer's organization signs for receipt of the goods.

Under FOB/FOT, the supplier is only responsible for loading the goods onto a truck. Should anything happen to the truck along the way, any loss incurred would be to the buying organization. It is therefore a good idea to always negotiate FIS deliveries.

Contact name

The contact name is usually the name and phone number of the person issuing the purchase order. However, if goods are to be delivered direct to the end-user this might be the name and phone number of the end-user.

Purchase Order number

The purchase order number is usually a system-generated number. It should be quoted on all other documents such as delivery dockets and invoices.

Invoice mailing instructions

Suppliers should be instructed not to send original; invoices with the goods as the receiving person is generally not the officer responsible for paying the account. Invoices should be mailed to the Accounts Payable section responsible for settling the department's accounts. This avoids lost invoices and delays in payment.

Signature and name of authorised person

It is recommended that all purchase orders should include the signature of an authorised person. This includes writing the name clearly, in case further follow-up is required. Suppliers will often not be concerned if an order has not been signed; however, internal or external auditors may be concerned.

Cost code or job number

The account/cost code/job number is also an internal requirement. The issue of the purchase order creates a financial commitment against the account/cost code/job number.

Trading terms

Trading terms are the details of payment, for example, net 30 days.

Terms and Conditions

The issue of terms and conditions for purchases is a major one, which is often overlooked. Government departments and State Owned Corporations include terms and conditions as part of the purchase order, where it is a printed purchase order or a system-generated purchase order.

What does this mean if Terms and Conditions are not included in a Purchase Order? It means that a very large percentage of orders are actually subject to a supplier's terms and conditions. The rules of a contract stipulate that all terms and conditions must be notified to the other party, which then accepts or rejects the *total* offer. To do otherwise is a counter-offer.

When we request details from a supplier and ask for something in writing, they will most likely append their own terms and conditions, which we seldom read the fine print! Supplier's terms and conditions are favourable for the supplier and may not include the terms and conditions that government agencies require. If we don't have terms and conditions on our purchase order and we don't challenge a supplier's terms and condition the purchase will be in accordance with the supplier's terms and conditions. Should something go wrong, we may find that the supplier is not legally bound to make good the wrong.

So, what should be done about this? We need a set of 8-12 standard terms and conditions that will cover us in most situations. We can either print these on the reverse of a purchase order, or fax as a second page to the purchase order. We need to ensure that ours is the last set of terms and conditions that changes hands. Of course, you may decide that you are willing to take the risk that nothing will go wrong – after all, most suppliers want our continued business and will normally help us out. However, it would be better to be legally covered. Terms and conditions that should be covered are:

- Payment terms

- Packaging and delivery
- Goods to be new and unused
- Inspection and Acceptance of goods
- Defective goods
- Warranty conditions
- Pricing and GST
- Commercial in confidence
- Indemnity
- Compliance with relevant Laws
- Insurances
- Intellectual Property
- Termination

Purchase Order Formats

Purchase order may be generated by financial systems or produced on pre-printed stationery. Purchase order formats are pre-determined to ensure uniformity.

Standing Offers and Preferred Supplier Arrangements

The State Contracts Control Board

In NSW, the State Contracts Control Board is responsible for the establishment and management of strategic or aggregated whole-of-government purchasing arrangements.

In July 2006, Premier's Memorandum 2006-11 announced a range of initiatives to improve further procurement outcomes, obtain better value for taxpayers and reduce operating costs of Government.

From July 2006, NSW Government purchasing officers are obliged to purchase from the Whole of Government Contracts negotiated through the State Contracts Control Board where they are in place. State Owned Corporations are obliged to do so, but are encouraged to use whole-of-government contracts where it is not contrary to their corporate intent.

Whole-of-Government Contracts

A whole-of-government contract is a contract for good or services, whether a Panel Period Contract or a Period Contract, for general use by the NSW Public Service, Departments and Agencies.

These contracts are defined as:

“A contract between the State Contracts Control Board and the supplier, under which the supplier makes a standing offer for the provision or disposal of goods and services over the term of the period contract and which a Customer (being any entity which can use a State Contracts Control Board period contract) can access by placing an order. It is also described as a Standing Offer to Supply Agreement”.

Whole-of-government contracts are administered by the Department of Commerce, through NSW Procurement’s Contracting Services branch.

Standing Offers

A Standing Offer is an agreement, **without obligation**, subject to specified terms and conditions, where the supplier agrees to provide requirements of a specified range of items, during a specified time period at agreed prices or on an agreed price basis. Normally, estimates for the guidance of the supplier are given.

A Standing Offer is not a contract. It is a standing quotation that the supplier may withdraw at any time before the offer is accepted. Similarly the buyer has no obligation to place an order.

Standing offers contain proposed terms and conditions that will apply to any subsequent contract. As with any offer to sell, the standing offer does not constitute a contract until the offer is accepted. Acceptance is by issue of a purchase order (whether written or not), which identifies the particular goods or services required. After a purchase order has been placed, a contract is formed for the supply of the ordered goods or services to which both buyer and supplier are committed.

The period of a standing offer arrangement is at the discretion of the initiating office. Typical State Contracts Control Board offers will be in force for 3 – 5 years. Purchasing officers should monitor expiry dates of their standing offers so that sufficient time is allowed for the necessary action to renew or replace an expiring offer.

- NSW Procurement’s smartbuy® website contains the SCCB whole-of-government contracts. To obtain access and an account number, please contact: www.smartbuy.nsw.gov.au.
- Phone enquiries should be directed to: **NSW Procurement, telephone: 9372 7791**. Access to the information is available direct on-line after a free registration process and is updated weekly.
- Further information regarding SCCB whole-of-government contracts (or standing offers) is available on the Department of Commerce website: www.commerce.nsw.gov.au Click on the **Procurement** tab and select **Whole of Government contracts**.

A preferred supplier agreement is where suppliers have undergone a pre-qualification assessment on a number of criteria, but not necessarily price.

Important Points about Standing Offers

It is important to check that any terms and conditions included on the purchase order comply with those that have been agreed under a standing offer arrangement. If you are unaware of the terms and conditions of the Standing Offer ensure that you get a copy of the agreement from Contracting Services and check the terms and conditions prior to issuing a purchase.

Under a standing offer, terms and conditions are agreed when the standing offer is arranged. However, a standard purchase order from that may contain different terms and conditions is used to place the order. The terms and conditions of the standing offer should be stipulated on the front page of the purchase order and the conflicting terms and conditions on the reverse of the order should be struck out. The terms and conditions of the standing offer arrangement should always take precedence.

To find the key Terms and Conditions included in whole-of-government contracts, please look at **Contracting Services** website: www.contractservices.nswcommerce.nsw.gov.au email: contractservices@commerce.nsw.gov.au

Agency-Specific standing offer arrangements

When agency-specific standing offer arrangements have been put in place by the Department of Commerce, these arrangements may be accessed by other agencies.

What if no Standing Offer is in place?

If your agency regularly uses goods/services not included in whole-of-government contracts, please contact **NSW Procurement**, telephone 9372 7791, website: www.contractservices.nswcommerce.nsw.gov.au email: contractservices@commerce.nsw.gov.au

Market Research and Supplier Selection

It is essential that you conduct market research to select the supplier able to provide goods or services offering the best value for money.

Purchasing objectives and the need to consider risks as part of the purchasing process are important factors to take into account when considering where and how quotations are obtained and which suppliers should be approached.

For many purchasing officers, whole-of-government contracts available on smartbuy® is the place to start your market research.

Where the goods or services you are seeking are not available on whole-of-government contract you should seek advice from **NSW Procurement**, telephone: 9372 7791.

Where goods or services you seek are not available on contract, you will need to identify suppliers or service providers to assess them prior to requesting a quotation. For example, if there were thirty suppliers in your location for a given product or service, which one (or which three if you require three quotes) do you approach? How would you know you are not obtaining quotes from the three worst suppliers of the thirty?

Some points to consider might be:

- Previous history with the agency
- Service, spare parts and customer support
- Location
- Price comparison with other suppliers or catalogues

Maintenance of Purchasing Records

Records of all purchasing information must be accurately and effectively maintained in accordance with the State Records Act 1998.

Documentation will vary from agency to agency and must conform to the requirements of the purchasing systems (manual or computerized) as defined by the Act.

Procedures should be in place to ensure that the following record-keeping requirements are met:

- Information is maintained securely to ensure confidentiality
- Relevant records are kept to provide an audit trail
- Relevant details may be extracted, collated and arranged in a format for reports
- Documentation is standardised and reviewed on a regular basis to streamline the purchasing processes.

Buyers should be:

- Aware of the organisational structure through which they are required to report
- Able to identify the next level of authority to whom they refer purchasing matters for determination when levels of authority are exceeded or when it is necessary to seek advice.

Audit Trail

An audit trail refers to the recording of all transactions to provide a traceable record for accountability and audit purposes.

Although many audit trails are electronic, hard copy information may be required. The audit trail must include a record of decision-making processes to:

- Defend practices against complaints, or respond to enquiries, and
- Demonstrate integrity in the process, fair dealing and visible probity

Buyers should be aware of the internal audit requirements and any specific instructions relating to purchasing operations. Transparency in the purchasing process requires all government-purchasing actions are visible to the public, to parliament and to suppliers. Much of this visibility is achieved through audits of purchasing actions and you must be conscious of the requirement for an audit trail for every purchase.

Purchasing records should show clearly:

- Authority for the purchase /proposal request
- Reasons for selection of the purchasing method
- Details of all offers obtained
- Supplier evaluation criteria and reasons for supplier selection
- Records of all related negotiations (if applicable)
- Completed purchase order
- Petty cash documentation (if applicable)
- Credit card documentation (if applicable)
- Record of exemption from use of standing offers (if applicable)
- Copies of all related correspondence
- Evidence of receipt
- Evidence of payment

Much of our correspondence is via email and it is worthwhile printing any emails that contain important information about the purchase, such as terms and conditions or pricing and delivery information. Emails may also be saved electronically in PDF format. Information in email inboxes is not always easy to find!

Confidentiality and Security

The maintenance of purchasing information in a secure and confidential manner is a principle of ethical dealing. Buyers, by the very nature of their job, come into possession of a great deal of commercial-in-confidence information, which must be held securely and protected, from unauthorised use.

Commercial-in-confidence information must never be used for personal gain or to prejudice fair, open and effective competition. Commercial information

concerning individual contracts must not be given to any inquirer without the authority of management or your agency's Freedom of Information Coordinator.

In discussions or negotiations with suppliers, you may discuss their performance however you should be particularly careful not to reveal, directly or indirectly, confidential commercial; information from another supplier, which may compromise the interests of that firm. To do so will not only compromise your ability to foster open and effective competition but will also compromise your personal reputation as a fair and ethical buyer.

Commercial-in-confidence information contained in your purchasing files must also be physically protected from unauthorised access and release by others, even inadvertently. Open files left on desks are an invitation to unauthorised staff or visitors to access confidential information. Filing systems should be established which provide secure storage of all purchasing transaction files and which restrict access to authorised personnel only.

Registration of Assets

Treasurer's Directions: 460.04 – 460.06 state:

460.04

1. All Authorities shall maintain a special record of the following assets:
 - Plant, equipment, machinery, motor vehicles, tools, furniture, office equipment, scientific apparatus, books and appliances;
 - Books issued on loan;
 - Works of art
2. Subject to (5) and (6) below, where, in the opinion of a senior officer, there is considered to be no significant risk, the maintenance of plant records for office furniture (including tables, chairs, document trays, lockers, cupboards, filing cabinets, floor coverings, etc) may be discontinued.
3. The record required to be maintained in (1) above shall apply to items costing more than \$5,000 and with a useful life of more than two years, except as indicated in (4) below.
4. Items costing \$5,000 or less which are at risk of loss by misappropriation shall also be recorded at the discretion of management.
5. Administrative control shall be kept of usage rates of all items exempted from being recorded as plant.
6. All "unrecorded plant items" including those delivered to one Authority from another, shall be entered in a Goods inward Book or other appropriate record as received.

- 460.05 Stores shall, upon receipt and if practicable, be stamped, impressed or otherwise marked in an indelible manner with a mark of Government ownership and once so stamped, impressed or otherwise marked, if to be disposed of other than by Government use, shall be further marked to show that Government ownership has ceased.
- 460.06 Each Authority shall maintain an asset register.