

**Submission  
No 6**

**PROCUREMENT AND MANAGEMENT OF ICT  
SERVICES IN THE NSW PUBLIC SECTOR**

**Organisation:** NSW Department of Education and Communities  
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**Position:** Director-General  
**Date Received:** 1/11/2012





**Education &  
Communities**

Mr Jonathan O'Dea MP  
Chair  
Legislative Assembly Public Accounts Committee  
Parliament of New South Wales  
Macquarie Street  
SYDNEY NSW 2000

MT12/1321

Dear Mr O'Dea

I write in response to your letter of 18 September 2012, regarding the NSW Parliament Public Accounts Committee Inquiry into the procurement and management of ICT services in the NSW public sector (your reference: LAC12/436).

The NSW Department of Education and Communities welcomes the opportunity to provide a submission to this Inquiry. A copy of the Department's submission is attached.

Should you have any questions regarding our submission, please contact Ms Joanne Bailey, Chief Procurement Officer by telephone on (02) 8633 1130 or via email at [joanne.bailey9@det.nsw.edu.au](mailto:joanne.bailey9@det.nsw.edu.au).

Yours sincerely

*Michele Bruniges*

Dr Michele Bruniges AM  
**DIRECTOR-GENERAL OF EDUCATION AND COMMUNITIES**  
30 October 2012

## **The NSW Department of Education and Communities' submission to the Legislative Assembly Inquiry into the procurement and management of ICT services in the NSW public sector**

### **Background**

Procurement of ICT for use within the Department of Education and Communities (the Department) has, until recently, been conducted within the framework of the State Contracts Control Board.

In December 2011, the Chairman of the State Contracts Control Board wrote to Directors-General advising that the Board intends all agencies to be accredited to undertake their own procurement.

In line with the NSW Procurement Reform agenda, the new NSW Procurement Board has established an Agency Accreditation Scheme for procurement of goods and services. The Department is not accredited and is expected to obtain procurement accreditation by the end of June 2013 so that it can manage its own procurement without reference to the NSW Procurement Board. In the meantime, the Department's procurement is managed under the interim arrangements approved by the NSW Procurement Board.

Consequently, the Department's submission to the Inquiry has been broken into three sections:

1. an overview of current practices;
2. an outline of our progress towards accreditation and establishing new processes and procedures to underpin compliance with the new framework; and
3. comments to the Inquiry around the Terms of Reference.

#### **A. Overview of Current Practices**

The Department's Information Technology Directorate (ITD) is committed to keeping its schools at the forefront of the educational use of information and communication technologies, while at the same time ensuring value for money through open, transparent, probity-rich and approved procurement practices.

To maintain a thorough understanding of current educational technologies, the Department's ITD staff work with schools and colleges to review and conduct trials of technologies to address identified educational needs and to ensure compatibility with the Department's enterprise architecture.

These trials inform the sourcing program for software, hardware and/or IT service. Suppliers are given the opportunity through the appropriate procurement methodology to offer their goods or services to the Department.

ITD is currently administering 99 software contracts and a smaller number of hardware contracts, all but 23 of which are for less than \$150,000. Large contracts that are in place include agreements with Telstra, Microsoft, Adobe, SAP and IBM.

A full list of ICT software contracts currently in effect is appended at **TAB A**. Each of these contracts was escalated for direct negotiation by the Department's General Manager, Information and Communications Technology, and/or the Chief Information Officer, under existing State panel contracts or following the appropriate approval process through the State Contracts Control Board.

Each set of negotiations have been undertaken with the support and oversight of the Department's procurement, legal and audit teams. The Department's legal unit also facilitated ITD obtaining specialist legal advice from external independent advisers with expertise in commercial law.

The agreements reached in each case have been achieved within what was at the time the State Contracts Control Board framework.

The result has been a uniquely beneficial set of contracts that make full use of the Department's considerable buying power to achieve maximum value for money.

### **Enterprise Agreements**

An example of this has been the Department's successful negotiations with software vendors, Microsoft and Adobe.

Based on annual report figures, the Department provides software to more than 1.4 million users. Microsoft software is the existing departmental standard for communication and day-to-day business, such as word processing, spread sheets, presentations and email applications. Adobe products have been used to provide students and teachers with a range of editing, design, collaboration and other tools.

The software is deployed within the Department's standard operating environment image, designed to support both school and TAFE curriculum. The programs are preinstalled on computers, including the 250,000 laptops distributed under the Digital Education Revolution Program, desktop and server technologies.

The contract for software licensing negotiated with Microsoft in 2009 was internationally unique, being based for the first time on the total number of users rather than the number of devices on which the software was loaded.

Another important feature of the agreement was the inclusion of options to renew or renegotiate the contract at three and four years (3 + 1 + 1).

This innovative approach has allowed the Department to expand its fleet of devices and services with greater flexibility under a firmly established cost framework.

This provision allowed the Department to forego extending the contract in 2012, in favour of renegotiating the agreement in order to review the products covered, to gain access to new offerings and to expand coverage to include the new staff added to the Department as part of the integration of the Office of Communities and Early Childhood.

The renewed five year contract successfully locked in current value to again allow for certainty of costs over a sustained period.

### **Other measures**

The Department has used the State Contracts together with other mechanisms to test the market on a range of other significant negotiations with similar success. One measure employed to maximise the range of testing is the use of a combination of expressions of interest and restricted requests for proposals.

In this way, a broad range of potential vendors can be canvassed in an initial round of testing followed by a more rigorous extended review of a select shortlist. These alternative procurement methodologies have been conducted following approval from the State Contracts Control Board and will continue to be managed under directions of the new Procurement Reform.

### **B. Progress towards Accreditation**

NSW Procurement, through the Director-General Finance and Services has asked cluster agencies for a report on the progress each are making towards achieving accreditation. The Department has reported to the new Procurement Board on its accreditation strategy.

The proposed Agency Accreditation Scheme for goods and services procurement has a tiered structure which will enable agencies to align their business requirements with their procurement resources, policies and processes and personnel.

The level of accreditation will be dependent on each agency's assessed capability relative to the complexity, level of risk and life contract value of the procurement's project needs.

The objective is for the Department is to ultimately be accredited with the highest level under the Scheme's criteria.

### **Preparing for Accreditation**

The Department is currently undertaking a detailed gap analysis to identify and map its current procurement capabilities compared to the Accreditation Scheme requirements.

The analysis will identify gaps in organisational capability in relation to strategy, governance, procurement processes, tools and systems, information management and reporting. An implementation program is being developed, including an appropriate organisational resourcing model and structure that addresses areas for improvement to achieve accreditation.

The Department will have finalised its initial accreditation application for approval by the NSW Procurement Board by 1 July 2013. It will continue to develop as required to meet the highest level.

The accredited<sup>1</sup> Department will centrally manage procurement policy and procedures and apply governance to monitor its compliance. Processes are now being developed to provide central visibility to all contracts and procurement activity, including IT and IT Services.

**TAB B** details the current procurement arrangements as directed by the NSW Procurement Board and under which the Department is required to, and currently does, operate.

### **C. Procurement Response to the Inquiry Terms of Reference**

The Terms of Reference that the Inquiry will specifically focus are:

- i. Measures to improve ICT project and contract management in the public sector, in particular in relation to contract negotiation and on-going contract management;*
- ii. The efficacy of central agency policies and strategies that guide ICT projects in the public sector;*
- iii. The adequacy of risk management and corruption prevention strategies relating to ICT procurement and contract management;*
- iv. Long-term planning to meet the ICT needs of the public sector and ensure the best value for money in the procurement of government ICT products and services; and*
- v. Any other related matters.*

In order for the Department and specifically the Procurement Solutions Directorate (PSD) to be more closely aligned with the aforementioned Agency Accreditation methodology, PSD has recently adopted a Category Management model. Within that model there are four Categories of which "IT and IT Services" is one. A Category Manager has been temporarily appointed to that role until a formal restructure takes place by early 2013.

The Category Manager's role is multi-faceted and includes the following;

- Analyse spend within categories across the Department;
- Research supply markets;
- Discuss opportunities with contract managers and business units;
- Monitor State and Department contract expiry dates;
- Work with contract managers and business units to develop and plan forward procurement needs;
- Develop and discuss strategy options;
- Project manage the sourcing activity through to evaluation and contract execution;
- Support contract implementation; and
- Monitor and report ongoing benefits realisation.

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<sup>1</sup> Accredited Department relates to all portfolios and entities except any individual entity that may obtain its own accreditation. These will be managed and addressed separately.

Also ITD recently filled the role of Director, IT Services & Finance who also has, amongst other things, the overarching contract management responsibility for the ITD specific contracts.

Both the IT Category Manager within the Procurement Solutions Directorate and the Director, IT Services and Finance are in the process of working with their relevant teams to ensure that both procurement and contract management processes meet not only the needs of the Department, but fit within the better practice contract management framework described within the Auditor General report dated 1 February 2012 on Managing IT Services contracts.



Contracts currently administered by ITD	
Software title	Vendor
Oliver additional license (for State Braille Unit)	Softlink Australia Pty Ltd
SPSS Annual Service	SPSS Australasia Pty Ltd
Netop Vision	Simply Technology
VMware ELA	VMware
ActiveXperts Network Monitor Ent Lic	ActiveXperts Software B. V.
Bamboo license	Atlassian Pty Ltd
Foxit PDF Ifilter	Foxit Software Company
Adtoolkit	Javelina Software
soapUI license	SmartBear Software
ASG-Remote Desktop	Betta Computer Services
JIRA license	Atlassian Pty Ltd
SkyView Risk Assessor Software	Halcyon Software (Australia) Pty Ltd
Confluence Unlimited	Atlassian Pty Ltd
WebBoard	Akiva
Change Auditor for Windows File Servers	Quest Software Pty Ltd
Men & Mice	InterSoft Solutions Pty Ltd
The iSeries Menu System	IBS Australia Pty Ltd
Liferay support licenses - 2 (Test)	Permeance Technologies
Rational Policy Tester for Accessibility	IBM Australia Limited
Enterprise Architect licenses	Sparx Systems Pty Ltd
Microsoft OWA Exchange 2007	Microsoft
PowerBuilder	Sybase Australia Pty Ltd
Google Maps license fee	SMS Management & Technology
Ontrack PowerControls subscription	Kroll Ontrack Pty Ltd
Oracle Tools	Oracle Corporation Australia Pty Ltd
Oracle Parental Portal	Oracle Corporation Australia Pty Ltd
JCC LogMiner Loader Support	JCC Consulting, Inc
Kinetic	Kinetic Data Pty Ltd
GNAF License	Pacific MicroMarketing
Splunk Enterprise Software	Noveix Systems Pty Ltd
Quest DBA	Quest Software Pty Ltd
Bamboo-FishEye	Atlassian Pty Ltd
CableSolve	Avantex Australasia Pty Ltd
Neoload Software	NEOTYS
Microsoft OWA Suite 2010	Microsoft
HP NMM Software	Hewlett-Packard Australia Pty Ltd
Bridgit Conferencing Software	Electroboard Solutions Pty Ltd
Fenestrae Communication Server	Fenestrae B. V.
PowerExchange for SAP NetWeaver BI	Informatica
MXTools Spamhaus and SURBL subscription	Websecure Technologies Pty Ltd
Maxamine	Accenture Australia
Wily Application Management	CA (Pacific) Pty Ltd
Systems Operations Suite	Halcyon Software (Australia) Pty Ltd
Test Data Management Tools	Informatica
QAS Email Validation Service	QAS Pty Ltd
Spotlight on Active Directory	Quest Software Pty Ltd
Identity Resolution	Informatica
Orion HA Enterprise	Availability Solutions
Oracle Partitioning, Identity Federation	Oracle Corporation Australia Pty Ltd
Chemgold	Chemwatch

Contracts currently administered by ITD	
Software title	Vendor
ESRI ArcGIS Server License	ESRI Australia
TIBCO ESB - addnl licenses	TIBCO Software Inc.
Norman Antivirus subscription	Websecure Technologies Pty Ltd
Oliver	Softlink Australia Pty Ltd
CA 2E	CA (Pacific) Pty Ltd
Tandberg TMS	Dimension Data Australia Pty Ltd
Liferay support licenses - 4 (Students, Parents Portal)	Permeance Technologies
Liferay support licenses - 4 (Staff Portal)	Permeance Technologies
XenApp Platinum licenses	Citrix Systems Asia Pacific Pty Ltd
Casper Suite ASA	JAMF Software
Citrix Technical Support	Citrix Systems Asia Pacific Pty Ltd
Esker DeliveryWare	Esker Australia Pty Ltd
VMware TAM	VMware
QAS QuickAddress	QAS Pty Ltd
Liferay support licenses - 8 (Students Portal, PWS, Dev, Test)	Permeance Technologies
HP Automated Test Tools	Hewlett-Packard Australia Pty Ltd
Lattice Consisto Support	Progress Software
Charon Alpha Virtualisation Software	United Business Solutions
OpenVMS Management software	CA (Pacific) Pty Ltd
Oracle RDBMS - Addnl EFTSU 12,000	Oracle Corporation Australia Pty Ltd
GlobalSign Certificate Authority	Dimension Data Australia Pty Ltd
Change Auditor for Active Directory	Quest Software Pty Ltd
TIBCO ESB	TIBCO Software Inc.
HP Load Runner	Hewlett-Packard Australia Pty Ltd
Network Security Appliance Software	Dimension Data Australia Pty Ltd
K2 Annual	Autonomy
Oracle Misc.	Oracle Corporation Australia Pty Ltd
Blue Coat Internet Filtering Agreement	Dimension Data Australia Pty Ltd
Red Hat Support Subscription	Red Hat Asia-Pacific Pty Ltd
Sirana AppAnalyzer	Websecure Technologies Pty Ltd
Trend Micro ERS Annual Service & Tech Support	Content Security
MailMarshal	Websecure Technologies Pty Ltd
PowerCenter, Data Profiling/Quality	Informatica
Clarity Software	CA (Pacific) Pty Ltd
Oracle RDBMS - Addnl EFTSU 28,589	Oracle Corporation Australia Pty Ltd
Oracle RDB	Oracle Corporation Australia Pty Ltd
Premier Support 2013	Microsoft Pty. Limited
Interwoven Teamsite	Autonomy
Symantec Netbackup Agreement 2013 - 20--	Hewlett-Packard Australia Pty Ltd
XenApp Enterprise licenses	Citrix Systems Asia Pacific Pty Ltd
Antivirus Maintenance 2012-13	Symantec
Remedy	BMC Software
Oracle RDBMS - EFTSU 117,244	Oracle Corporation Australia Pty Ltd
MaxAttention Support Services	SAP Australia
Adobe Enterprise License Agreement Year 5	Adobe Systems Software Ireland Ltd
SAP Maintenance - Oct 2012	SAP Australia
SAP Maintenance - Apr 2013	SAP Australia
Enterprise Agreement 2012-17, Year 2	Microsoft Pty. Limited
Oracle DB and Partitioning	Oracle Corporation Australia Pty Ltd

## NSW Procurement Board Directions


**Procurement  
Board**
**NSW PROCUREMENT BOARD DIRECTIONS**

The NSW Procurement Board has issued these directions pursuant to section 148(1), *Public Sector Employment and Management Act 2002*. Pursuant to Section 149 of the Act, a government agency is to exercise its functions in relation to the procurement of goods and services in accordance with any policies and directions of the Board that apply to the agency.

**DIRECTION 2012 - 01  
PROCUREMENT OF GOODS AND SERVICES  
ON BEHALF OF OTHER GOVERNMENT AGENCIES**

A government agency (within the meaning of the *Public Sector Employment and Management Act 2002*) listed in the attached Schedule may do all things necessary to conduct procurement for that agency and other government agencies.

This direction applies from 1 September 2012 until it is withdrawn.

**Schedule**

- Department of Finance and Services
- Health Administration Corporation
- NSW Police Force for procurement of goods and services for that agency and for: Department of Attorney General & Justice; Corrective Services, Juvenile Justice; Ministry for Police and Emergency Services; Disaster Welfare Assistance; Emergency Management; Information and Privacy Commission; Judicial Commission; Legal Aid Commission; Office of the Director of Public Prosecutions; Fire & Rescue NSW; NSW Crime Commission; Rural Fire Service; and State Emergency Service
- Fire & Rescue NSW, for the purposes of a contract to provide fire fighting equipment/foam

**DIRECTION 2012 – 02  
OBLIGATION BY GOVERNMENT AGENCIES TO USE  
WHOLE-OF-GOVERNMENT CONTRACTS**

A government agency (within the meaning of the *Public Sector Employment and Management Act 2002*) must use whole-of-government contracts for obtaining the goods or services to which those contracts apply. The whole-of government contracts are listed at [www.procurement.nsw.gov.au](http://www.procurement.nsw.gov.au).

**Agencies located in non-metropolitan areas**

A government agency located in non-metropolitan areas can purchase goods and services valued up to \$3,000 (including GST), from any source, despite those goods and services being available on specified whole-of-government contracts, provided that the supplier's rates for the goods or services are reasonable and consistent with normal market rates.

Specified contracts are listed at [www.procurement.nsw.gov.au](http://www.procurement.nsw.gov.au)

"Non-metropolitan areas" is that part of the State that *excludes* the following local government areas: Ashfield, Auburn, Bankstown, Blacktown, Blue Mountains, Botany Bay, Burwood, Camden, Campbelltown, Canada Bay, Canterbury, Fairfield, Gosford, Hawkesbury, Holroyd, Hornsby,

Hunters Hill, Hurstville, Kogarah, Ku-ring-gai, Lane Cove, Leichhardt, Liverpool, Manly, Marrickville, Mosman, Newcastle, North Sydney, Parramatta, Penrith, Pittwater, Randwick, Rockdale, Ryde, Strathfield, Sutherland, Sydney, The Hills, Warringah, Waverley, Willoughby, Wollondilly, Wollongong, Woollahra and Wyong.

**Local schools, local decisions policy**

Under the *Local Schools, local decisions* policy, principals of Department of Education and Communities (DEC) schools can purchase goods and services valued up to \$5,000 (including GST), from any source, despite those goods and services being available on specified whole-of-government contracts. School principals should consult DEC's website <http://www.schools.nsw.edu.au>.

This direction applies from 1 September 2012 until it is withdrawn.

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**DIRECTION 2012 - 03  
APPROVAL REQUIRED TO EXTEND A GOVERNMENT PROCUREMENT  
ARRANGEMENTS WITH A SUPPLIER BEYOND FIVE YEARS  
INTERIM ARRANGEMENTS**

A government agency (within the meaning of the *Public Sector Employment and Management Act 2002*) may not, without the approval of its responsible portfolio minister, enter into an arrangement with a supplier for the procurement of goods and services for a term longer than five (5) years, including any options for extension.

The Minister may approve an arrangement for a particular procurement or for a group or class of procurements.

In seeking the Minister's approval, a government agency must provide the Minister with written advice that demonstrates the exceptional circumstances requiring it to enter into an arrangement or extend an arrangement beyond five years.

A government agency must provide the NSW Procurement Board or the NSW Procurement Board Chairperson, when issued with a notice from the Board or the Chairperson, with a list of the agency's arrangements with suppliers for the procurement of goods and services that extend for terms longer than five (5) years, including any options for extension.

This direction applies from 1 September 2012 until it is withdrawn.

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**DIRECTION 2012 - 04  
APPROVED PROCUREMENT METHODS FOR GOODS AND SERVICES**

A government agency (within the meaning of the *Public Sector Employment and Management Act 2002*) that is not accredited under the NSW Procurement Board's *Agency Accreditation Scheme for Goods and Services Procurement* (pursuant to section 147 (1) of the Act) may enter into an arrangement with a supplier for the procurement of goods and services using the following methods:

**Procurements over \$ 3,000 and up to \$30,000**

An unaccredited government agency can procure goods and services valued over \$3,000 and up to \$30,000, which are not available on whole-of-government contracts (listed at [www.procurement.nsw.gov.au](http://www.procurement.nsw.gov.au)), subject to seeking at least one written quotation.

**Procurements over \$30,000 and up to \$250,000**

An unaccredited government agency can procure goods and services valued over \$30,000 and up to \$250,000, which are not available on whole-of-government contracts (listed at [www.procurement.nsw.gov.au](http://www.procurement.nsw.gov.au)), subject to seeking at least three written quotations.

**Procurements over \$250,000 and up to \$1 million**

An unaccredited government agency can procure goods and services valued over \$250,000 and up to \$1 million, which are not available on whole-of-government contracts (are listed at [www.procurement.nsw.gov.au](http://www.procurement.nsw.gov.au)) subject to conducting a tender.

For the above three classes of procurement, "value" must be the estimated value over the proposed term of the acquisition and not a value per annum.

**Procurements over \$1 million**

An unaccredited government agency can procure goods and services valued over \$1 million, which are not available on whole-of-government contracts (listed at [www.procurement.nsw.gov.au](http://www.procurement.nsw.gov.au)) subject to:

- conducting an open competitive procurement process that is appropriate to the nature of the goods and services; and
- prior to conducting the procurement, submitting full details and specifications of the proposed procurement to the Department of Finance and Services to receive its concurrence to the procurement.

The above arrangement is subject to a government agency complying with:

- all legislative obligations, including those set out in section 149, Public Sector Employment and Management Act 2002
- NSW Government Procurement Policy (TPP 04 – 1)
- NSW Government Tendering Guidelines (December 2006)
- relevant Ministerial Memoranda; Department of Premier and Cabinet Circulars; and Treasury Circulars, policies and guidelines
- other relevant NSW Procurement Board directions.

Agencies should note clauses 21A (*Supply of goods and services by approved disability employment organisations*) and 21B (*Procurement for emergencies*), *Public Sector Employment and Management Regulation 2009*.

The Board advises accredited agencies to use this direction to guide its procurement of goods and services until such time as the Board issues its Procurement methods guidelines and supporting directions.

**Supply by government trading enterprises**

A government agency may obtain goods or services directly from any government trading enterprise that provides those goods or services in the exercise of its principal functions.

**Agencies with specific statutory powers of procurement**

This direction does not apply to a government agency undertaking the procurement of goods and services pursuant to the agency's specific statutory powers of procurement, until such time as the agency is accredited by the NSW Procurement Board.

This direction applies from 1 September 2012 until it is withdrawn.

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**DIRECTION 2012 - 05**  
**USE OF *PROCURE IT* WHEN ENTERING INTO AN ARRANGEMENT WITH A SUPPLIER**  
**FOR THE PROCUREMENT OF ICT GOODS AND SERVICES**

When entering into an arrangement with a supplier for the procurement of information and communications technology (ICT) related goods and services, a government agency (within the meaning of the *Public Sector Employment and Management Act 2002*) must use the *Procure IT Framework*.

The Procure IT Framework is available from [www.procurement.nsw.gov.au](http://www.procurement.nsw.gov.au).

For the benefit of suppliers and Government, and to ensure consistent ICT contract terms across government, government agencies are not permitted to amend the standard terms of the *Procure IT Framework* without the written approval of the Department of Finance and Services. The Department will approve changes that are reasonable and necessary to accommodate unique features of a particular procurement.

**Intellectual property**

The revised *Procure IT Framework* creates the default (or the starting contractual) position in favour of the ICT supplier owning the intellectual property (IP) in the information and communications technology (ICT) product that the supplier develops under the contract with a government agency.

Under the default position the supplier grants the agency (as the "customer") a broad, free-of-charge licence to use the IP, and transfer it between agencies.

An agency can elect on the General Order Form within the *Procure IT Framework* for IP to be vested with the agency, on the bases of public interest, 'exceptional circumstances' or where the agency (alone or in partnership) has undertaken substantial research and development of an ICT product or service and where retention of IP benefits the agency. Examples may include: security and/or strategic (including commercial) interest; law enforcement; IP applying to critical government ICT systems; and IP that includes personal information. Agencies should satisfy themselves that these circumstances exist when taking measures to retain the IP in ICT procurement contracts. Documented reasons for retaining the IP should be kept by the agency. In these cases of retained IP, the agency grants the supplier a full use licence without charge (including the right to commercially exploit).

This direction applies from 1 September 2012 until it is withdrawn.

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**DIRECTION 2012 - 06**  
**CONTRACT REQUIREMENTS THAT LIMIT COMPETITION**

A government agency (within the meaning of the *Public Sector Employment and Management Act 2002*), unless it can demonstrate exceptional circumstances, when entering into an arrangement with a supplier for the procurement of goods and services, is not permitted to mandate requirements for prospective suppliers to have experience in providing goods or services to the NSW Government or government agency.

This direction applies from 1 October 2012 until it is withdrawn.

**CHAIRPERSON**  
**NSW PROCUREMENT BOARD**