

# Inquiry into the procurement practices of government agencies in NSW and its impact on the social development of the people of NSW

Hearing – 3/04/2024

## Questions on Notice

### QUESTION 1 – Page 13-14

**The Hon. DAMIEN TUDEHOPE:** So every local health district procurement officer would be required, obviously, to comply. Who oversees that to actually do an audit of the manner in which local health districts are implementing their procurement contracts?

**MICHAEL GENDY:** There is an internal audit function within the system and generally most districts would have an IR internal audit group.

**The Hon. DAMIEN TUDEHOPE:** How often does that take place?

**MICHAEL GENDY:** I would have to take that on notice to come back to you.

**The Hon. DAMIEN TUDEHOPE:** Are there spot checks in relation to individual contracts entered into by local health districts?

**MICHAEL GENDY:** They do occur.

**The Hon. DAMIEN TUDEHOPE:** How often?

**MICHAEL GENDY:** I'll take that on notice and come back to you.

### ANSWER

The frequency of Internal Audit's review of procurement contracts varies by LHD. The scope is often determined by each LHD's priorities, risks and audit plan of the individual Internal Audit teams. Audits may be undertaken as a specific procurement audit or aspects of procurement may also be incorporated into wider audits undertaken, for example, a hospital or department review or a review of delegations. The MoH Internal Audit Branch will be working with HealthShare to develop a series of analytics to assist in automating a procurement audit program. This will assist LHDs by reducing the time taken to complete the audit, increasing the frequency of review and providing state wide coverage.

### QUESTION 2 (relates to Q1)– Page 17

**Ms ABIGAIL BOYD:** We've talked in this inquiry about how we have this devolved procurement structure across government, but then Health itself is probably the most devolved department that we have in terms of the 15 local health districts and all of the shared services. What do you do in addition to what other agencies would do to manage the additional risk from that? We heard from the Auditor-General that she didn't necessarily have oversight of all of the local health districts. Do you do spot checks? This is one of the questions that Mr Tudehope asked as well. How do you keep yourself happy that things are being complied with?

**MICHAEL GENDY:** I'll first touch on the fact that our goods and services procurement policy is quite tight in terms of threshold and delegation compared with what the recommended policy framework across New South Wales is. We're at \$250,000 whereas the New South Wales procurement policy framework is at \$680,000, in line with EPP requirements. We've taken a very hard approach to say, "Only up to \$250,000 is what you can actually conduct on your own." The second piece is that we do conduct a contract and policy compliance, where every year we run a report to look at all the spend that is at \$150,000 and above and see whether that has been declared or has been put into our contract repository called Procure, which you may have heard of before.

We do, as a ministry and within my branch, actually conduct that check to ensure the transparency of any of those contracts and purchase orders. Someone could have actually raised a purchase order for \$160,000 and it doesn't have a contract and doesn't have anything, but we will pick it up and we will look at all those purchase orders and see whether they've been declared or whether they've been put

on the contract repository system or not. If not, we will go back to the district and say, "You have to upload these." Anything that's unsavoury will tend to bubble up and we'll have that visibility as well. I'll come back on notice with some of those points that I mentioned to Mr Tudehope.

## ANSWER

Please refer to the response to question 1 and the answer provided by Mr Gendy during the hearing (Transcript page 17).

The Ministry of Health conducts regular reviews into contract disclosure practices across NSW Health. The purpose of these reviews is to improve compliance and provide ongoing education regarding our legal and policy to obligations. The Ministry of Health commenced these reviews in 2022 – with annual reviews conducted for FY22 and FY23 and quarterly reviews having commenced from this financial year (i.e. FY24).

### Contract disclosure requirements

In general, each review checks that all contracts (including purchase orders) which are valued at \$150,000 (including GST) or more, are:

- saved on the NSW Health procurement system, 'PROcure', and
- disclosed on the government contracts register located on 'NSW eTendering'.

These contract disclosure requirements derive from the *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**) and the NSW Health Policy Directives *NSW Health Procurement (Goods & Services)* (PD2024\_009) and *Disclosure of Contract Information* (PD2018\_021). For example, the GIPA Act requires that only contracts with private sector entities must be disclosed on NSW eTendering. The methodology of the review takes this, and other legal and policy-related exceptions into account.

### Methodology

The Ministry of Health reviews purchase orders (a form of contract) to assist in ensuring that all potential transactions which require disclosure, have been disclosed.

The methodology is summarised as follows:

- Review all purchase orders valued at \$150,000 (including GST) or more in the period against the current contract registers in eTendering and PROcure 2.0.
- Assess for any exceptions (for example, contracts with non-private sector entities do not require disclosure per GIPA Act).
- Map out each purchase order with one of four statuses:

Status	Definition
Non-compliant	The relevant contract <i>does not appear to be disclosed on either eTendering or saved on PROcure</i>
Partly compliant (only eTendering)	The relevant contract <i>appears to be only disclosed on eTendering</i> (but not saved on PROcure)
Partly compliant (only PROcure)	The relevant contract appears to be <b>only saved on PROcure</b> (but not disclosed on eTendering)
Fully compliant	The relevant contract is <i>both disclosed on eTendering and saved on PROcure</i> .

- Prepare a spreadsheet for each entity identifying contracts which do not appear to be disclosed in the relevant system/s.
- Work with entities to finalise disclosures, questions on policy and legal requirement etc.
- Review completed spreadsheets.

### QUESTION 3 – Page 17-18

**The Hon. EMILY SUVAAL:** Thanks so much to you all for appearing today. When referring to your submission, you talk about the evaluation criteria that is used in tenders. Are you able to explain to us what that evaluation criteria is and perhaps provide it on notice? It refers to each NSW Health agency having its own set of standards. Can you explain, when you refer to agency, what that is? Is that LHDs — or at what level?

**MICHAEL GENDY:** Sure. At a very high level explanation of that, the evaluation criteria is really product by product dependent. Depending on what you're actually procuring, there's a non-weighted price element in there, as mentioned, which is roughly 70 per cent, generally speaking, for most medical consumables and items. That 70 per cent will be made up of quality attributes, fit for purpose, any specific patient outcomes that would be delivered by the use of the product.

**The Hon. EMILY SUVAAL:** Are you able to provide those weightings to the Committee?

**MICHAEL GENDY:** We can definitely provide some examples for you on notice, yes.

### ANSWER

Please see attached document (**TAB A**) with examples provided by HealthShare NSW, including one example from each of their three whole-of-health sourcing teams and an example of a corporate procurement. Note that HealthShare NSW are not required to disclose tender evaluation criteria weightings in tender documents to suppliers. However, weightings are generally applied as 60-80 per cent to non-price criteria and 20-40 per cent directed to price.

### QUESTION 4 – Page 20

**The Hon. EMILY SUVAAL:** I will move on, with the time I have left, to ask about the electronic procurement management system that HI have got for recording sourcing and contract management activities. Is this data shared with any other agencies, including NSW Treasury?

**EMMA SKULANDER:** In particular the contracts themselves?

**The Hon. EMILY SUVAAL:** You talk about it including supply performance, for example. Is that data that you're capturing shared?

**EMMA SKULANDER:** I might just take it on notice to confirm the extent of sharing. Certainly across the Construction Leadership Group, there is a lot of conversation about the performance reporting and where it gets centralised. I did note in another of the submissions there was a note — I think it was Public Works, who own the centralised system — around the system not being fit for purpose or modern because it hasn't been invested in and, accordingly, should the agencies have been storing their own data?

**The Hon. EMILY SUVAAL:** Just gone their own way, yes.

**EMMA SKULANDER:** We do share performance information across the Construction Leadership Group through conversation, where feasible. Obviously we're always looking to collaborate with our colleagues across the construction agencies, which we do through that Construction Leadership Group.

**The Hon. EMILY SUVAAL:** But it's not shared in any formal way? You talk about by conversation.

**EMMA SKULANDER:** Yes, and I will just take on notice whether we provide that specifically, in the form of the data being provided into the system.

### ANSWER

Health Infrastructure (HI) utilises the whole-of-government prequalification schemes managed by NSW Public Works and NSW Treasury for consultant procurement, where consultant categories are available under the schemes.

HI has an electronic procurement management system that records suppliers' performance reports as part of sourcing and contract management. Formal supplier performance reporting is undertaken for all construction and consultant contracts over \$150,000, where HI has applied requirements consistent with NSW Treasury's PMS Scheme SCM0005.

Infrastructure NSW (INSW) collates performance data for all NSW Government construction contracts over \$50 million into a quarterly summary report. HI shares the performance data and participates in a quarterly NSW Major Projects Contractor Performance Reporting forum convened by INSW where this information is discussed confidentially among Construction Leadership Group members.

HI's electronic data transfer system was established to share the supplier's performance data electronically with the NSW Contractor and Consultant Management System (CCMS). The CCMS has been decommissioned so this electronic transfer is not currently occurring. INSW /CLG is leading a project for a replacement system.

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## Supplementary questions

### QUESTION 1

What was the total value of contract labour procured by the Department in 2022-23?

### ANSWER

NSW Health expenditure on contract labour in FY22/23 was \$238.5m (per Audited Financial Statements).

### QUESTION 2

What is your share of the quota to reduce this by 25% by 2025-26 under the Government's election commitment?

### ANSWER

NSW Health is committed to reducing expenditure on contract labour in line with the 2023 NSW Government election commitment to reduce expenditure on contractors by 25%. Information about contract labour expenditure for each year is publicly available in the NSW Health Annual Report.

### QUESTION 3

What was the total value of consultant services procured by the Department in 2022-23?

### ANSWER

NSW Health expenditure on consultant services in FY22/23 was \$23.4m (as per Audited Financial Statements).

### QUESTION 4

What is your share of the quota to reduce this by \$35 million per annum under the Government's election commitment?

### ANSWER

NSW Health has committed to reducing expenditure on consultant services by approximately 25%.

## QUESTION 5

Do you see any challenges in meeting these targets or any risk of adverse outcomes in doing so?

## ANSWER

NSW Health is working to meet these election commitments and does not foresee any adverse outcomes in meeting these targets.

## QUESTION 6

The Nurses and Midwives Union submits that “Union engagement in procurement processes must occur to ensure ethical procurement practices relative to labour hire and migration strategies to fill worker shortfalls in NSW”. What involvement does the Union currently have in the procurement of labour hire? How would you see this working? And do you see any risk in allowing such involvement?

## ANSWER

NSW Government buyers are required to use the mandatory prequalification scheme SCM0007 – Contingent Workforce when engaging non-frontline workers. Recruitment agencies that are prequalified on this scheme are subject to a strict set of scheme rules, required to comply with the NSW Government Supplier Code of Conduct and all legal, statutory and government requirements.

The Public Health System Nurses’ and Midwives’ (State) Award sets out some consultation obligations in circumstances such as where there are changes that are likely to have significant effects on employees.

NSW Health also has existing extensive consultation forums where matters affecting the parties such as strategies to fill worker shortfalls can be addressed.

Engagement of labour hire agencies needs to be in accordance with government and health requirements and delegations.

## QUESTION 7

Do you agree with the Nurses and Midwives claim that “Procurement of agency nurses to fill gaps in rosters is increasing. Whilst agency nursing can be a preferable career pathway for nurses, offering greater wages and flexibility than casual pools, its use to procure a sustainable workforce has negative consequences for patient outcomes and funding.”?

## ANSWER

Over a period that spanned the COVID-19 pandemic and floods, local health districts increasingly called upon contingent labour to fill critical staffing vacancies. NSW Health is establishing a Whole of Health Nursing Agency Panel for nurses and midwives. The panel will deliver a consistent approach to engage suppliers and will deliver significant savings to the system.

## QUESTION 8

The Nurses and Midwives Union also call for “An explicit ‘Local, Secure and Fair Jobs’ code that outlines industrial rights and conditions for contracts and requires suppliers to submit to WHS and Industrial audits, put together compliance plans and model industrial clauses in major contracts”.

(a) What elements of this are already part of your procurement practice?

- (b) Do you see any issues of favouring larger, more established companies and excluding smaller, newer, developing companies arising from mandating a “secure” jobs code?
- (c) Is Health Infrastructure equipped to take on the role of Fair Work Australia in determining whether a supplier is offering “fair” jobs?
- (d) What potential costs or disruptions to workflow could potentially arise from empowering third parties (such as unions) to conduct specific WHS and industrial audits under a Health Infrastructure procurement contract, in addition to any existing obligation to allow audits under Commonwealth or State laws?

## ANSWER

(a) - (b) All suppliers to NSW Government must commit to the NSW Government Supplier Code of Conduct. The Supplier Code of Conduct sets a minimum set of expectations and behaviours for doing business with NSW Government. The Code of Conduct specifically calls out expectations around labour, human rights and workplace health and safety. The NSW Health standard goods and services contract requires suppliers to abide by any policy, legal, legislative and regulatory requirements. The standard contract advises that NSW Health may conduct reviews or audits of the supplier’s performance and compliance with the contract, which includes verifying that the supplier is in compliance with legislative and regulatory requirements.

(c)-(d) Health Infrastructure (HI) does not have the statutory authority to take on the role of Fair Work Australia in determining whether a supplier is offering “fair” jobs. Enforcement of industrial relations legislation is best managed by the specialist agencies that have the appropriate statutory enforcement powers and expertise to do that work – in particular, the Fair Work Ombudsman and Fair Work Commission, and NSW Industrial Relations.

HI relies on its robust procurement practices and contractual requirements to ensure its suppliers comply with relevant industrial relations laws and on the enforcement of those laws by the relevant specialist agencies.

## QUESTION 9

You note that in 2020 NSW Health embarked on procurement reform that has improved compliance and savings and has increased efficiencies. Could you provide detail on these savings and efficiencies – i.e. what they are and how they have been achieved?

- (a) Has there been any associated assessment of outcomes other than cost-savings?
- (b) Has there been mapping against these changes and changes for example in clinical outcomes or staff satisfaction?

## ANSWER

There are several initiatives that have created efficiencies within procurement across the NSW Health system. Key initiatives and outcomes are as follows:

### NSW Medicines Formulary

The NSW Medicines Formulary has developed a holistic framework governing the procurement and usage of pharmaceuticals to support optimum clinical governance and better value health care, leading to improved patient outcomes. This includes:

- Consistency of medicines used while maintaining appropriate clinical choice
- Uniformity across the NSW public hospitals of formulary items, resulting in an improved equity of access to medicines for all patients
- Improved medication safety and ability to monitor medication use and outcomes

- Increased alignment of pharmaceutical procurement with clinical practice to obtain better value health care.
- Twenty-seven formularies reduced to a single formulary for inpatient initiation.
- Over 6,700 unique medicines reduced to approximately 2,200 unique medications.
- Improved value and alignment of pharmaceutical contracts.

### **Master Catalogue**

The master catalogue initiative consolidated 29 customer catalogues to a single statewide master catalogue with statewide standardised pricing. All NSW Health entities will have access, which will result in equity of products for patients across the state, cost savings through economies of scale and improved data quality. Benefits of the master catalogue include:

- **Staff efficiencies:** the master catalogue contains 60,000 unique items, down from the previous 130,000 line items across 29 catalogues, which has resulted in significant staff administration efficiencies;
- **Cost savings:** a single catalogue allows standardised purchasing across the state, giving NSW Health better market leverage and the ability to negotiate better pricing across the state. This is available in all NSW Health entities immediately.
- **Improved data quality and error reduction:** there has been a 16 per cent reduction in free-text ordering, which improves data quality, allows automated processing of invoices and ensures appropriate ordering.
- **Increased contract compliance:** a 10 per cent increase in compliance with Whole-of-Health contracts allows removal of items not 'on contract' from the catalogue, ensuring all items have contracted protections.

### **SmartChain**

SmartChain aims to transition all procurement activity into a single end-to-end centralised statewide procurement platform. The project was first piloted at Nepean Blue Mountains Local Health District and has since been implemented at hospitals in Southern NSW and Hunter New England Local Health Districts. User feedback has been widely positive. The following benefits have been realised:

- Improved patient safety and traceability of products to patients, reducing risk of adverse patient outcomes in the event of product recalls, and simplifying the product recall management process.
- Improved clinician experience due to easier ordering and minimised manual processes.
- Improved data collection, management, use and connection to patient billing.
- Improved monitoring and measurement, resulting in an uplift of performance across districts, providing visibility of department spending on high-cost items, together with stock reduction, less over-ordering and rebate code assignment.
- Ability to track any catalogued product and reduction in manual processes.
- Addresses recommendations of the 2019 Audit Office report and meets Therapeutic Goods Administration requirements.

### **DeliverEASE**

DeliverEASE aims to transform the medical consumable supply chain by optimising processes from the point of receipt of goods at the hospital dock to the ward storeroom. DeliverEASE aims to provide improved inventory visibility and management controls, resulting in increased stock availability and financial savings. It is currently deployed in 35 of the targeted 52 hospitals. DeliverEASE will deliver the following benefits:



- Efficiencies for staff – reduced clinical time spent searching for products in storerooms due to improved layout, reduced time putting away stock upon arrival.
- Clinical product standardisation and rationalisation with improved stock purchasing governance.
- Stock room rationalisation and management, including reduction of stock levels, ordering inefficiencies and waste.
- Improved accountability through control mechanisms and the ability to proactively respond to audits or inquiries.

## QUESTION 10

There are many procurement officers across health, are these organised into specialties or LHDs?

- (a) Are there also then procurement teams in Health agencies? If not how are issues in sub-markets dealt with e.g. supply issues or innovations etc?
- (b) Are the procurement officers clinically trained? If not, how do they check that they are procuring the most appropriate items? What tracking is there of wasted equipment and materials?

## ANSWER

In addition to the below, HealthShare NSW Strategic Procurement Services, buyers purchasing on behalf of the NSW Health system are organised under the following categories:

- Medical equipment
  - Medical consumables
  - Prostheses
  - Pathology
  - Pharmaceuticals; and
  - Corporate – property services, support services, professional services and business services.
- a) There are procurement teams within each NSW Health Local Health District and specialty network. There are also procurement teams within HealthShare NSW buying on behalf of Local Health Districts and networks for procurements above their \$250,000 threshold and an internal team buying for other HealthShare NSW departments. eHealth NSW conduct procurements for Local Health Districts and networks for ICT related goods and services above \$150,000 as well as providing specialist advice and guidance to all entities where required.

Further, there is a HealthShare NSW Pillar Agencies Support procurement team comprising of three business partners that provide embedded support to the NSW Health pillar agencies (Cancer Institute NSW, Agency for Clinical Innovation, Clinical Excellence Commission, Health Education and Training Institute, the Bureau of Health Information, NSW Ambulance, and Mental Health Commission NSW).

- b) Most buyers working in the medical equipment, medical consumables, pharmaceuticals, pathology and prostheses categories have some form of clinical qualification. Some non-medical buyers also have a health background.

Medical equipment and prostheses are entered onto relevant asset registers maintained by HealthShare NSW and other health entities on delivery. Medical equipment and consumables are carefully managed by HealthShare NSW. Inventory management has

been improved via internal programs such as SmartChain and DeliverEASE. Pharmaceutical inventories are managed as per relevant legislation and standards.

## QUESTION 11

Your submission notes that the role of procurement offices is to assist in supporting Health in ensuring that subcontractors deliver 'value for money'. This seems to be the only one of the 5 objectives of the overall government procurement aims that is mentioned? Are any of the others focused on by your officers? If so – how?

## ANSWER

### Value for money

The *NSW Government Procurement Policy Framework* provides that value for money is not necessarily the lowest price, nor the highest quality good or service. Value for money requires a balanced assessment of a range of financial and non-financial factors such as quality cost and fitness for purpose. NSW Health considers ways to integrate the principles of value-based healthcare into the value for money assessment through outcomes-focused specifications, evaluation criteria and contractual performance measures. Value for money is determined by comparing lifetime benefits (for example, non-financial factors), against lifetime costs (for example, financial factors). Assessing value for money generally falls into three categories:

- Upfront: savings, changes to revenue, costs avoided, transitioning in costs and risks.
- After purchase: total cost of ownership benefits and costs taking into consideration the contract period, transactional costs, transitioning out and contingency costs and contract management risks; and
- Fit for purpose: alignment with policy, suitability of goods and services, flexibility.

### Fair and open competition

The NSW Health (Goods and Services) Procurement Policy and Procurement Procedures sets out minimum levels of competition required for procurements of every value. In summary, when buying off a whole-of-government (WofG) or whole-of-health (WofH) contract, no written quotes are required, and buyers may directly purchase from the supplier up to \$30m. Where not using a WofG or WofH contract, the following minimum levels of competition apply:

Estimated contract value	WofG or WofH prequalification scheme*	Outside of WofG or WofH contracts or schemes
\$10,000 or less	No written quote required*	No written quote required
>\$10,000 or \$30,000	Minimum one written quote required*	Minimum one written quote required
>\$30,000 - \$250,000		Minimum three written quotes required
\$250,000 - <\$30m	Minimum three written quotes required*	Open approach to market required, using eTendering, unless an exemption has been obtained from the CPO. HealthShare NSW and eHealth NSW must undertake these procurements on behalf of the NSW Health entity.

*\*Unless minimum levels of competition are stated in the prequalification scheme rules relevant to the particular category of procurement.*

## Easy to do business

- Notifying the market on NSW eTendering as early as possible about upcoming opportunities to let them work through our processes and cost their work accurately.
- Use a PCard for procurements up to \$10,000, where feasible.
- Minimising insurance requirements for SMEs to only require insurance details at the time of contract award, rather than when responding to a request for submission; and ensuring the minimum possible levels of public liability and professional indemnity insurance are imposed on SMEs.
- Ensure suppliers are paid within contractual timeframes and that small businesses are paid within five business days of receipt of a correctly rendered invoice. Where a procurement is valued at \$7.5m or more, NSW Government agencies must require large businesses to pay small business subcontractors within 20 business days.
- Use WofG or WofH contracts or prequalification schemes where these exist, including using the standard tender and contract templates to make it easier for suppliers to familiarise themselves with contract requirements.

## Innovation

NSW Health encourages NSW Health entities to ensure broad industry engagement and flexible procurement practices to assist in adopting innovative services and solutions. Where an entity is approached with an unsolicited proposal, it should seek advice from the Ministry of Health. In compliance with *C2017\_05 Unsolicited Proposals and the Unsolicited Proposals Guide for Submission and Assessment*, proponents must lodge an unsolicited proposal with the Department of Enterprise, Investment and Trade for detailed assessment and Cabinet approval.

## Social outcomes and sustainability

Supporting social outcomes and sustainability is a priority for NSW Health. This is achieved by:

- Compliance with the *SME and Regional Procurement Policy*:
  - In FY22/23, NSW Health spent \$1.64bn on goods and services with SMEs, approximately 22 per cent of its entire goods and services spend for that financial year. As at 31 December 2023, NSW Health spent \$735m of its \$3.5bn goods and services spend with SMEs, approximately 21 per cent.
  - For goods and services contracts valued at \$3m or more, a minimum 10 per cent of the non-price evaluation criteria must be allocated to support SME participation, and a further 10 per cent allocated to support of other environmental and social priorities.
  - Compliance with the *Small Business Shorter Payment Terms Policy*, to support cash flow for small businesses.
- Compliance with the NSW Government Aboriginal Procurement Policy, including meeting targets for direct spend with Aboriginal businesses, number of contracts awarded to Aboriginal businesses and Aboriginal participation in contracts valued \$7.5m or more:
  - In FY22/23, NSW Health spent \$41.9m directly with Aboriginal businesses, exceeding the NSW Treasury assigned target.
  - In FY22/23, NSW Health awarded 152 goods and services contracts valued over \$10,000 to Aboriginal businesses, against a target of 63. NSW Treasury has set a target for NSW Health to award 71 goods and services contracts to Aboriginal businesses in FY23/24 (awarded contract data not yet available).
  - NSW Health staff also attend the NSW Treasury led Aboriginal Procurement Community of Practice, and attends industry events such as the 'Gather and Grow' events hosted by NSW Treasury, aimed at linking Aboriginal businesses with NSW Government buyers.

- Complying with the *Public Works and Procurement Regulation 2019* permission to directly engage disability employment organisations with a single quote. In FY22/23, NSW Health engaged 46 disability employment organisations, to a total value of \$2.63m.
- Complying with the *Government Resource Efficiency Policy* by ensuring goods and services forming part of construction and infrastructure projects meet minimum energy, water use and air emissions standards.
- Compliance with the *Modern Slavery Act 2018 (NSW)* by ensuring reasonable steps are taken to ensure that goods and services procured by and for government agencies are not the product of modern slavery. NSW Health are members of the NSW Anti-Slavery Commissioner's working group to develop guidance and reporting metrics for NSW Government agencies.
- Compliance with the *Modern Slavery Act 2018 (Cth)*. While NSW Government agencies, as representatives of the Crown, are not required to comply with the Act, NSW Health Local Health Districts, Sydney Children's Hospital Network, Justice Health and Forensic Mental Health Network and the Cancer Institute of NSW fall under the definition of 'reporting agency'. This is due to these entities not being considered a representative of the Crown, and having an annual consolidated revenue of more than \$100m a year. The Ministry of Health, in consultation with HealthShare and eHealth prepare and submit the annual joint statement on behalf of these reporting entities.

## QUESTION 12

Different parts of the NSW Health seem to have their own set of standards for considering local content, value for money, etc. but do they each have a representative on the Procurement Board? If not then how does the Secretary for NSW Health know what to report to the Procurement Board about the achievement of those aims and compliance with policy?

## ANSWER

The NSW Procurement Board is made up of one member for each 'agency group'. The Secretary, NSW Health holds NSW Health's membership. NSW Health entity compliance with policy is monitored through the *NSW Health Performance Framework* which outlines the process the Ministry of Health undertakes in setting and assessing the level of performance of each NSW Health entity, including by the use of Key Performance Indicators to assess purchasing, budget setting and management and compliance with procurement requirements.

Annual service agreements between Health entities and the Ministry of Health set out the requirements to be met and the KPIs against which the entity is to be assessed. Service agreements include detailed KPIs regarding procurement, reflective of the NSW Government procurement objectives, directions and policies and NSW Health priorities and policies. NSW Health entity compliance with service agreements is monitored monthly by the Ministry of Health. Performance against procurement compliance targets is tracked and presented in a broader monthly report to an executive committee, including the Secretary, NSW Health.

### QUESTION 13

Your submission notes that NSW Health is developing a vendor management system, is this the same system used in other NSW Government Agencies? Have you considered compatibility issues if not?

### ANSWER

The Vendor Management System for professional services that NSW Health is implementing has been developed in collaboration with NSW Treasury. NSW Treasury has specified reporting requirements and system blueprints to ensure the system collects the data required by NSW Treasury to meet its commitments in response to the recommendations of the Audit Office report *NSW Government agencies use of consultants*. The data collected by NSW Treasury is the same for each NSW Government agency, however systems across government do not need to be compatible for this to occur. NSW Government agencies may use a vendor management system developed by a supplier on an existing Whole of Government Contract, or use existing systems that allow the agency to provide the required reporting.

### QUESTION 14

Has NSW Health ever identified and or reported non-compliance in its annual report and self-attestation for accreditation?

### ANSWER

Yes. A responsibility of accredited agencies is to report any 'trigger events' in its annual accreditation report. Trigger events may include under performance, machinery of government or organisational changes that impact the procurement function, changes to capability, non-compliance with policy or legislation; or failure to submit annual accreditation documentation. In its FY22/23 accreditation report, NSW Health reported a trigger event that was assessed by the Procurement Leadership Group (PLG) (a sub-committee of the Board) and a trigger event action plan was established. The PLG monitors agency progress against the plan, and when the plan is completed, NSW Health will submit the completed plan, endorsed by the Secretary, NSW Health to the PLG for endorsement.

### QUESTION 15

Your submission states that 'NSW health procurement policy requires agency buyers to meet the requirements of the NSW Procurement Policy Framework regarding social and sustainable procurement measures'.

(a) What does this look like in practice?

(b) Does NSW Health monitor this? If so, how? If not, then how do they assure themselves that this is being done?

### ANSWER

- a. NSW Health buyers meet the requirements of the NSW Procurement Policy Framework regarding social and sustainable procurement measures by applying the requirements at Question 11.
- b. NSW Health monitors compliance through the Service Agreement mechanisms indicated at Question 12.

## QUESTION 16

Your submission states that 'NSW Health embeds anti-slavery clauses into tenders etc'. What do you do then to ensure compliance with these clauses?

### ANSWER

NSW Health is required to comply with the *Modern Slavery Act 2018 (NSW)* and is working with the NSW Anti-Slavery Commissioner to implement the *Guidance on Reasonable Steps* released in December 2023 and meet reporting requirements from 1 January 2024.

Refer to response at Question 11. The most recent report, for FY22/23 was submitted in December 2023.

NSW Health has taken several proactive measures to ensure compliance with the requirements of both Acts:

- Tender documentation has been updated to ensure all respondents comply with applicable laws relating to modern slavery;
- The right to audit suppliers through their contracts has been established, enabling immediate termination of rights for breach;
- A Supplier Relationship Management program has been implemented in 2023, which includes ongoing management of contract compliance and Key Performance Indicators, including compliance with modern slavery requirements and the NSW Government Supplier Code of Conduct.

Additionally, NSW Health conducts business with many large multinational suppliers required to report under the Commonwealth Act. These suppliers must confirm compliance with the Act as a condition of supply. NSW Health has also engaged the support of a specialist third party to assess the effectiveness of the plan and assist with the implementation of any outstanding actions.

Standard clauses in HealthShare NSW's standard Standing Offer Agreement (SOA) which are the terms under which Whole-of-Health panel arrangements are established:

#### *Section 12 Modern Slavery*

##### *12.1 – Compliance*

- The Supplier represents, warrants and undertakes that, as at the date of its execution of this Agreement, neither the Supplier, any entity that it owns or controls or, to the best of its knowledge, any subcontractor of the Supplier, has been convicted of a Modern Slavery offence under the Modern Slavery Laws.*
- The Supplier must take reasonable steps to ensure that Modern Slavery is not occurring in the operations and supply chains of the Supplier and any entity that it owns or controls.*

##### *12.2 – Information*

- For the purpose of this clause, "Information" may include (as applicable) information as to any risks of, actual or suspected occurrences of, and remedial action taken in respect of, Modern Slavery but excludes Personal Information.*
- The Supplier must:*
  - subject to any restrictions under any applicable Laws by which it is bound, provide to the Customer any Information and other assistance, as reasonably requested by the Customer, to enable the Customer to meet any of its obligations under the Modern Slavery Laws; and*
  - notify the Customer in writing as soon as it becomes aware of either or both of the following:*
    - *a material change to any of the Information it has provided to the Customer in relation to Modern Slavery; and*

- any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or those of any entity that it owns or controls).

- (c) The Supplier must, during the Term and for a period of seven years thereafter:
- i. maintain; and
  - ii. upon the Customer's reasonable request, give the Customer access to, and/or copies of, records in the possession or control of the Supplier to trace, so far as practicable, the supply chains of all Services and Deliverables provided under this Agreement and to enable the Customer to assess the Supplier's compliance with this clause 12.

### 12.3 – Subcontracts

In respect of any subcontracts that related to the Supplies, or the whole or any part of this Agreement (and without limiting the Supplier's obligation under any Modern Slavery Laws), the Supplier must take reasonable steps to ensure that those subcontracts contain Modern Slavery provisions that are reasonably consistent with the provisions in this clause 12.

### 12.4 – Response to Modern Slavery Incident

- a. If the Supplier becomes aware of any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls), the Supplier must take reasonable steps to respond to the occurrence in accordance with any internal Modern Slavery strategy and procedures of the Supplier and any requirements of any relevant Authority, including any relevant New South Wales Procurement Board code/guidance.
- b. Any action taken by the Supplier under clause 12.4(a) will not affect any rights of the Customer under this Agreement, including its rights under clause 24.1 (Termination for Cause by the Customer).

## QUESTION 17

During the Consultants inquiry you indicated that there were instances in which there was no procurement plan because of the COVID emergency (pg.9 of your response to the Questions on Notice received by PAWC on 2 August 2023). Have there been other instances in which there has been no procurement plan, any other 'emergency'?

## ANSWER

HealthShare NSW is not aware of any contracts awarded under emergency provisions since the end of COVID.

## QUESTION 18

What information do you provide to the Procurement Board regarding your procurement activities?

- (a) How often do you provide this information?
- (b) When did you last report to the Procurement Board?

## ANSWER

Under requirements of the NSW Procurement Board Accreditation Program (Goods and Services), NSW Health reports annually to the Board. The reporting includes a self-attestation that NSW Health entities complied with the minimum accreditation requirements, an agency procurement plan for the upcoming 12 months, an outcomes report for the previous financial year.

NSW Treasury collects invoice data quarterly from each NSW Government agency which it uses to report to the NSW Procurement Board against various metrics, such as spend on social procurement suppliers and other Whole of Government initiatives.

## QUESTION 19

What records do you keep when you undertake a procurement activity?

- (a) How do you keep these records (i.e. in what systems)
- (b) Are these records provided to anyone aside from the group undertaking the procurement? If so, who are these provided to?

## ANSWER

When running a procurement exercise, the following records could be generated, depending on the value or risk of the procurement:

- Business case;
  - Nomination of evaluation committee members;
  - Evaluation committee members Conflict of Interest and Confidentiality Disclosures;
  - Expenditure/demand analyses;
  - Procurement plan/strategy;
  - Evaluation plan/matrix/scoring sheet
  - Tender documents (draft and final versions);
  - Records relating to any tender briefing held;
  - Tender addenda;
  - Tender responses;
  - Completed evaluation scoring sheets/minutes of evaluation committee meetings;
  - Tender clarifications/negotiation plan & records
  - Evaluation report;
  - Award brief;
  - Contract departures;
  - Contract documents (draft & executed);
  - Disclosure notice/s;
  - Contract handover/implementation/management documents.
- a. Electronic records are held by NSW Health in either a secured shared drive or an access-controlled area of Microsoft Teams/Sharepoint. Published tender documents and responses are also held within the NSW Government eTendering portal. Executed contracts and associated contract management documents are held on NSW Health's contract repository, PROcure. Hard copy records relating to tenders and contracts are no longer maintained.
- b. Electronic records pertaining to a procurement process are only viewable by officers who have signed a confidentiality declaration or procurement officers/managers involved in the delivery of procurement activities. Access is also given to internal or external auditors and other internal advisors (eg, legal, governance) as required.

## QUESTION 20

Who do you deal with in Treasury/NSW Procurement when undertaking a procurement process? Who in Treasury/NSW Procurement has oversight of your procurement processes?

## ANSWER

NSW Treasury/NSWP input is not required when undertaking a goods and services procurement as the NSW Procurement Board has granted NSW Health a level 2 accreditation, which means that it can procure goods and services up to any value, without seeking



concurrence from another accredited agency. Health Infrastructure holds the construction accreditation for NSW Health, allowing it to procure construction projects valued over \$1.3m. However:

- Advice may be sought from the relevant category management team within NSW Procurement when implementing new systems, responding to audit recommendations or with regard to Whole of Government contracts or schemes;
- NSW Health publishes relevant tenders on NSW eTendering, and discloses all contracts valued over \$150,000 (incl. GST) on the platform, over which NSW Procurement has full line of sight.
- Reporting or data may be requested from NSW Procurement on behalf of the NSW Chief Procurement Officer, where it manages categories of spend or are instructed by the NSW Procurement Board;
- When procuring a significant new investment or project that requires new funding commitments outside the State Budget or Forward Estimates, a business case may be required for submission to Treasury and the Expenditure Review Committee of Cabinet.
- Infrastructure NSW (INSW), through the Infrastructure Investor Assurance Framework (IIAF) places requirements on projects depending on the risk, complexity and value of the individual project. Gateway reviews are required for projects tiered as either Tier 1 or Tier 2. As when necessary, INSW may also request projects go through independent Health Check reviews in development, procurement or delivery. Upon completion of gateway or health check reviews, delivery agencies must close out emergent recommendations in a timely manner and report back to INSW.

## QUESTION 21

Can you walk us through your procurement process?

- a. How do you advertise available opportunities?
- b. When assessing the various applicants what factors do you consider?
- c. How do you apply value for money
- d. Do you take into consideration factors like local content, business size, and social, economic, labour and environment outcomes? Do you weight these? If so, what are the weightings and how are these determined? How transparent in the weighting process to tenderers?
- e. Do you consider ongoing maintenance that may be required as an outcome of a procurement activity?
- f. How do you advise successful and unsuccessful applicants of a procurement outcomes? Are the results published anywhere that is publicly available?
- g. What feedback do you provide to successful and unsuccessful applicants?
- h. How do you manage contracts while they are active
- i. How do you assess the quality of work provided? Who does this?
- j. How do you ensure compliance with the terms of the contract and overarching procurement policies and processes?
- k. Do you have specialists in different areas of compliance -for example Labour Standards/labour law, OHS?
- l. What data do you keep for each procurement process? How do you maintain your data? Do you undertake any data analysis across procurement activities in your agency?

## ANSWER

- a. Available opportunities are communicated to the market in different ways, depending on the value of the procurement and whether other conditions apply. The NSW Health Chief Procurement Officer may grant an exemption to some requirements where exceptional circumstances apply:
- i. Direct negotiation:
    - Aboriginal owned business or SME or Regional business – direct sourcing is permitted up to \$250,000.
    - Australian Disability Enterprises – direct sourcing is permitted to any value.
    - Prequalification schemes – unless scheme rules advise minimum levels of competition required, direct negotiation is permitted up to \$250,000.
    - Where no WofG or WofH contract or prequalification scheme is used, direct negotiation is permitted up to \$30,000.
  - ii. Limited approach to market, conducted via eTenders:
    - Prequalification schemes – a minimum of three written quotes are required for procurements \$250,000 to less than \$30m.
    - Where no WofG or WofH contract or prequalification scheme is used a minimum of three written quotes are required for procurements valued at \$30,000 up to \$250,000.
  - iii. Open approach to market, conducted via eTenders:
    - Where no WofG or WofH contract or prequalification scheme is used, an open approach to market is required for procurements over \$250,000.
    - When the procurement is for or on behalf of the Ministry of Health, and valued over \$680,000, Enforceable Procurement Provisions require that an open approach to market is conducted.
    - When establishing or renewing a WofG or WofH contract, an open approach to market is required.
- b. At the outset, respondents must be eligible to tender (eg, they must have an ABN and be registered for GST) to be considered for a contract. Priority can be provided to SMEs and Regional businesses, Aboriginal owned businesses and Australian Disability Enterprises under the relevant policy settings and financial thresholds as required.

Respondents are required to pass a number of mandatory selection criteria in order to be evaluated further. For example, financial viability, acceptance of terms and conditions of the contract and whether they meet mandatory legislative and quality accreditation considerations, particularly in relation to medical goods and services. Tenderers must also gain minimum required scores against each of the discretionary (weighted) criteria in order to be considered for a contract.

- c. The NSW Government definition of “value for money”: *"looking at the total benefit to the community and measuring and costing it in the most transparent way. It's not just about securing the lowest price or the highest quality."*

In practice, seeking value for money involves applying a mixture of price and non-price evaluation criteria to tenders and ongoing monitoring to ensure that we continue to obtain value through the lifetime of contracts.

NSW Health places great importance on the determination of price/non-price evaluation criteria weightings by documenting discussions held between evaluation committee members and approval of the evaluation plan by the relevant procurement delegate.

- d. Please see responses to questions 11 and 22.

- e. Consideration of planned and reactive maintenance is built into the evaluation of proposals in a number of ways, for example:
- As a recurring input or contribution into a whole of life cost analysis, and
  - Respondents invited to provide details of their maintenance arrangements which is then assessed and scored by evaluation committee members.
- f. Following the approval of a contract award recommendation, the successful respondent/s will be contacted first, followed by all unsuccessful respondents. Telephone scripts or email and letter templates are maintained internally. In line with the *Government Information (Public Access) Act 2009*, all awarded contracts valued over \$150,000 (incl. GST) are disclosed on NSW eTendering within 45 days of contract award. The disclosure notice includes the name of the successful supplier.
- g. All respondents to a tender are entitled to a debrief. The debrief provides the supplier with the key strengths and weaknesses of its submission against each of the criteria. While suppliers are encouraged to ask questions, they are advised that a debriefing is not an opportunity to seek comparison between their submission and those received from other suppliers, nor is it an opportunity to question the outcome of the evaluation process.
- h. The complexity of contract management activity depends on the risk and value of the procurement. For low value contracts, or those established using existing WofG or WofH contracts or schemes, buyers are required to confirm that the goods and services are received on time for the agreed price and quality, ensure the goods and services comply with the terms or rules of existing contracts or schemes and raise any minor issues with the supplier.

Where the contract is of a higher value or risk, a contract management plan should be in place and include activities such as transition in and transition out plans, a contract user guide (for complex multi-user contracts), contract implementation activities, appropriate contract administration, monitoring compliance with contractual terms, performance management and supplier relationship management.

- i. Assessment of the quality of work for smaller projects, for example consultancy engagements, is done by the contract manager. Issues are raised directly with the supplier and rectified. At the end of a consultancy agreement, contract managers must submit a Post Engagement Evaluation Form.

Effective contract management for larger contracts is vital in ensuring that suppliers meet their commitments and obligations. The contract or category manager must monitor and regularly review contractual performance measures, such as key performance indicators and service level agreements. Contract managers should promptly address any non-compliance or downward trends in key performance indicators with the supplier to minimise the potential for supply problems or contract failure. Contract managers must facilitate contract review meetings with suppliers, the frequency of which is dependent on the value and risk of the contract.

Contract and category managers also assess end-user satisfaction with the way the contract is being delivered. This may reveal unreported compliance issues, contract administration issues, or even flaws in the contract design. Alternatively, it may reveal examples of best practice within customer agencies or excellent customer service from suppliers. End-user satisfaction may be measured using online reporting tools, customer surveys, user forms or information sessions.

- j. Compliance is managed through the activities described at (h) and (i) and may also include audits or third-party monitoring. Non-compliance should be raised by the contract manager with the supplier in the first instance and managed through contract review meetings. Should non-compliance be unable to be resolved through this method, issues may be escalated to the local executive or the NSW Health Chief Procurement Officer.
- k. NSW Health has specialist governance and legal offices to provide advice relating to contracts. The Ministry of Health Legal Branch and the Ministry of Health Strategic

Procurement Branch also work with NSW Health agencies on a variety of issues relating to procurement and contracts.

- l. See answer to Question 19 (above), a wide range of documents and data is generated from each procurement process undertaken. HealthShare NSW Procurement and Supply Chain has a Strategy and Investment team responsible for generating expenditure and demand extracts and tracking of savings. HealthShare NSW also has a Performance Analytics team that also provides support with regard to the generation and management of procurement-related data.

## QUESTION 22

How many local businesses and suppliers do you currently engage?

## ANSWER

The NSW Government *Small and Medium Enterprise and Regional Procurement Policy* defines a local content as 'goods produced, services provided, and labour supplied in NSW'.

- In FY22/23 – NSW Health spent \$5.9bn or 77% of its \$7.5bn goods and services spend with 16,187 local businesses.
- In FY23/24 (1 July – 31 December), NSW Health spent \$2.7bn or 78% of its \$3.4bn goods and services spend with 11,930 local businesses.