

Standing Committee on Social Issues

**Inquiry into Procurement Practices of Government Agencies in NSW and its
Impact on The Social Development of the People of NSW - 3 April 2024**

– Supplementary questions

1. For each of the four whole-of-government contract panels you manage:

- a) what percentage of suppliers are NSW based? Australia + NZ based? Internationally based?**
- b) what is the breakup by dollar value of procurement under each of these four whole-of- government contracts into NSW, etc.?**

ANSWER

- a) The below table outlines what percentage of Department of Education suppliers are NSW, Australia and New Zealand and Internationally based:

| | NSW based | Australia + NZ based | International Offices based |
|---|------------------|-----------------------------|------------------------------------|
| Janitorial and Catering Supplies Contract | 67% | 67% | 33% |
| Multimedia Solutions Contract | 93% | 100% | 0% |
| Office and Education Furniture Contract | 75% | 100% | 0% |
| Office Supplies Contract | 100% | 100% | 0% |

- b) The breakup by dollar value for each of the whole-of-government contracts is tabled below:

| Contract to Date | \$m |
|---|------------|
| Office Supplies Nov 19 to Dec 23 | \$182.51 |
| Janitorial and Catering Supplies Nov 19 to Dec 23 | \$186.87 |
| Multimedia Solutions Nov 19 to Dec 23 | \$171.86 |
| Office and Education Furniture Aug 21 to Oct 23 | \$146.64 |

2. Noting that your submission states “The department is currently in the planning stages for the 4 whole-of-government contracts which have expiry dates in 2024. As part of the procurement planning, social and sustainable and procurement policies are being included (as required and where appropriate):

- a) how long will each of the new whole-of-government contracts last, that is in what year will the new contracts expire?**
- b) Have you done any preparatory work on implementing the Government’s commitment to 30% weighting to capture local content, job creation,**

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small business and ethical supply chains into the new WoG contracts from 2024 onwards?

- c) If not, will the first opportunity to include this policy commitment in these contracts not occur until after their new expiry dates?

ANSWER

- a) There are three whole-of-government contracts due for renewal in Quarter 3, 2024.

| CONTRACT TITLE | CONTRACT TERM |
|---------------------------------------|--|
| C101 Office Supplies | Expiry of initial 3-year term in 2027, with 2 x 1-year exercisable options |
| C102 Janitorial and Catering Supplies | Expiry of initial 3-year term in 2027, with 2 x 1-year exercisable options |
| C278 Multimedia Solutions Contract | Expiry of initial 3-year term in 2027, with 2 x 1-year exercisable options |

The fourth contract is not due to expire until August 2025.

- b) Yes, this preparatory work includes consideration for Aboriginal businesses, disability enterprises, regional businesses, social outcomes and small to medium enterprises, noting that the procurement strategies are still being finalised.
- c) NA refer to b)

3. Who ordered the asbestos contaminated mulch for laying at:

- a) Allambie,
 b) Cranebrook and
 c) Liverpool West public schools?

ANSWER

- a) The Department of Education's contractor, Synthetic Grass and Rubber ordered and installed the mulch.
- b) The asbestos fragment at Cranebrook High School was identified in a previously known area of in-ground asbestos contamination. This area was appropriately remediated following the positive result. The EPA confirmed that this find was unrelated to the wider mulch issue.
- c) The principal contractor delivering the upgrade to Liverpool West Public School, Australian Building Construction Company, was responsible for procuring subcontractors to deliver the landscaping and external works for the upgrade project.

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- a) on what date was the mulch ordered?**
- b) on what date was the mulch first laid on site**

ANSWER

Allambie Heights Public School:

- a) The contractor has stated that the mulch was ordered on 15 December 2023 and delivered on site on 18 December 2023.
- b) The works commenced on 18 December 2023 and were completed by 22 December 2023.

Cranebrook High School:

- a) Not applicable.
- b) Not applicable.

Liverpool West Public School:

- a) The contractor has stated that mulch for:
 - Stage 1 was ordered on 28 March 2023 and delivered to site on 29 March 2023.
 - Stage 2 was ordered on 5 July 2023 and delivered to site on 6 July 2023.
- b) The contractor has stated that mulch for:
 - Stage 1 was installed on 29 March 2023.
 - Stage 2 was installed on 6 July 2023.

5. Have any changes been made to procurement practices to prevent a recurrence of any similar threat to the safety of students and employees?**ANSWER**

The Department of Education is reinforcing with contracted builders of new schools and upgrade projects that they must adhere to statutory requirements and Australian standards and further steps are underway to ensure this is clear and understood by all suppliers as well as all relevant parties within the organisation.

The department has issued a safety notice to schools who may bring in their own mulch. This reminds them that the mulch must be certified to EPA guidelines, and to contact School Infrastructure if they have any question or concerns.

The department has also amended its specifications in the Education Facilities Standards and Guidelines to further clarify that recycled mulch is not permitted, to reinforce the EPA's requirements.

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Changes to protocols have been made to ensure contractors provide the department visibility of subcontractors engaged so the department can quickly identify any potential non-conformance.

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

Contractor Central is the Department of Education's contractor management solution that operates under the Whole of Government C0007 contract for the procurement of Contingent Labour (contractors). It is part of the NSW Government strategy to manage contractors more efficiently across agencies.

The value through this source was \$294.8 million in the 2022/23 financial year.

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

In line with its election commitment, the NSW Government has set itself a target to reduce these costs by 25%. The Department of Education is committed to reducing its expenditure on contingent labour and has implemented a range of measures accordingly as part of contributing to this target. For further information refer to answer to supplementary question 10.

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

Since July 2023, the Department of Education changed its annual report cycle from calendar year to financial year.

Calendar year 2022 consultant services value was \$3,721,487 (including GST). This has been disclosed in the department's Annual Report. The value includes \$2,447,008 for period January to June 2022 and \$1,274,479 for July to December 2022.

The department's Interim Annual Report for January 2023 to June 2023 shows \$642,904 (including GST) payment for consultant services.

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

ANSWER

In line with its election commitment, the NSW Government has set itself a target to reduce spending on consultants in the government sector by \$35 million per annum. The Department of Education is committed to reducing its expenditure on consultants and has implemented a range of measures accordingly as part of contributing to this target. For further information refer to answer to supplementary question 10.

10. You are separately committed to additionally reducing total spend on contractors and management consultants by an additional \$411 million over four years to help pay for the teachers' \$1.4 billion pay rise. Will any of this work need to be done in-house now or was it all wasteful procurement? Who will do this work?

ANSWER

The Department of Education uses contractors and consultants in accordance with NSW Public Sector policies and guidelines, and commensurate with need which varies as required. As part of its ongoing commitment to better align its budget and meet savings targets in line with NSW Government commitments and expectations, the department has introduced a range of new controls and guidance for the engagement and management of contractors and consultants. Specifically, the department is targeting a reduction in contractors and consultants as part of the plan to reduce programs that don't directly support schools.

The approach being taken is part of ensuring the department is focused on effective and efficient delivery of its new priorities set out in the Plan for NSW Public Education in line with its annual budget allocation.

By way of example and as previously canvassed in the Education and Early Learning portfolio Budget Estimates hearings, the department had observed growth in the use of contractors over time. In response the department's Secretary has taken steps to reduce those costs, including converting contractor engagements to employee engagements, ending contractor engagements where no longer required, and ensuring repeatable expertise resides inside the organisation.

Financial results and performance are reported through agency annual reports. Likewise, future budget allocations and any relevant specific targets or measures for future years are determined through the NSW Government budgeting process and tabled in the annual Budget Papers.

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11. For any work being done by contractors or consultants that will now be done in house, what is the total cost of the work done by contractors and consultants? What is the new cost of doing this work in house?

ANSWER

Refer to answer to supplementary question 10.

12. After all these cuts are made how much do you anticipate still spending in 2025-26 on procuring (a) contract labour? (b) consultants?

ANSWER

Refer to answer to supplementary question 10.

13. 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

- a) The Department of Education does not provide information directly to the NSW Procurement Board. Procurement activities such as the Annual Accreditation Attestation, Emergency Procurement reporting, and social procurement reporting is submitted to the agency managing the program. In most instances that is NSW Procurement.
- b) N/A

14. Have you ever identified and or reported non-compliance in your annual report and/or self- attestation for accreditation?

ANSWER

For the Annual Report: no.

The Department of Education is separately accredited for Construction Procurement and for Goods and Services Procurement (including IT).

For Construction Procurement Accreditation: no.

For Goods and Services Procurement Accreditation – whilst the department didn't identify or report non-compliance in either the annual report or the self-attestation, it

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did report outside of those specific activities through the trigger event mechanism which is available in the NSW Agency Accreditation Scheme. In October 2020, the integration of the two teams (the Construction Procurement team and Goods and Services Procurement team) into one cohesive procurement function saw a complete review of all processes and procedures to ensure the entirety of the procurement function is appropriately managed.

Risks were identified in late 2020, which led to the proactive engagement of O'Connor Marsden & Associates (OCM) to conduct a risk review and develop an action plan to address any risks to accreditation specifically in view of the integration. Within the NSW Agency Accreditation Scheme there are requirements for accredited agencies to notify the NSW Procurement Board if issues have arisen that could be seen to put the accreditation at risk (this is referred to as a trigger event). The department self-reported a trigger event as we could not sign the self-attestation and as per the Agency Accreditation Scheme requirements, a trigger event management plan was developed and implemented.

The department subsequently addressed and actioned all the items in the trigger event management plan and following an update that was provided to the NSW Procurement Board, the NSW Procurement Board approved the closure of the trigger event in November 2023.

15. 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

Records include but are not limited to: Procurement strategy, Conflict of interest declarations, Tender Evaluation Plan, Tender Evaluation Report, Tender debrief, Awarded contracts, Unsuccessful letters, GIPA contract disclosure.

- a) These records are kept in Portt system (source to contract system), T Reign (project management system), IPS (Integrated Procurement System), Teams, Content Manager TRIM (records management system).
- b) These records are provided only upon approval of a request, for example the department's Internal Audit team, the department's Professional Ethics Standards team, The Audit Office of NSW, ICAC, often via the department's internal legal team.

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16. 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

The Department of Education is Level 2 Accredited for Goods and Services Procurement and also accredited for Construction Procurement. As per the Agency Accreditation Scheme, it is only a requirement of non-accredited agencies to seek concurrence with NSW Procurement with their procurement strategy.

The department deals with a number of people within NSW Procurement / NSW Treasury when dealing with matters surrounding the Procurement Leadership Group (PLG), the NSW Procurement Board, policies under development, reporting requirements etc.

17. 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) I note that you mention innovation in your submission (p. 78) that you are trying to incorporate innovation into construction procurement – has this meant changing your tendering process? As I understand it one criticism of procurement processes is that innovation is pushed out of the tender processes because specifications for a project have already been decided meaning that innovation in design is limited– is this the case for education?
- f) Can you explain a bit further your subcontracting arrangements in construction? Wasn't clear to me in the submission (p. 78)
- g) Do you consider ongoing maintenance that may be required as an outcome of a procurement activity?
- h) How do you advise successful and unsuccessful applicants of a procurement outcomes? Are the results published anywhere that is publicly available?
- i) What feedback do you provide to successful and unsuccessful applicants?
- j) How do you manage contracts while they are active?
- k) It is noted in the Education submission (p77 and 78) that your procurement team ensure compliance with social and sustainable procurement policies – how do they do this? Who do they report to?

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- l) How do you assess the quality of work provided? Who does this?
- m) How do you ensure performance issues with contracts are identified and escalated? Do you have examples of when this has occurred?
- n) How do you ensure compliance with the terms of the contract and overarching procurement policies and processes?
- o) Do you have specialists in different areas of compliance -for example Labour Standards/labour law, OHS?
- p) 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

| | Construction | ICT and Goods and Services, |
|----|--|---|
| a) | Construction – Delivery Strategy All open tenders are published on the NSW eTendering website, noting that most tenders are invited tenders from the various prequalification schemes. | ICT, goods and services – some are published on the eTendering site as an advanced opportunity and also via the published Annual Procurement Plan. Many tenders are invited tenders under the appropriate prequalification scheme. All open tenders are published on eTendering website. |
| b) | Applicant in this question is read as who the department "invites" to respond, as such, the following attributes are relevant: <ul style="list-style-type: none"> - Estimated value of works - Complexity of the scope of work - Capacity and availability of the respondent - Locality - Relevant Policy <p><i>Note that Each procurement strategy considers different factors depending on the type of work or required outcome.</i></p> | Same |
| c) | During the tender evaluation, in the vast majority of projects weighted evaluation criteria that include price and non-price are utilised. Non-price criteria include: <ul style="list-style-type: none"> - Relevant Experience of the Nominated Team - Capacity and Availability of the Nominated Team - Appreciation/Understanding of the Project Goals and Requirements - Approach and Methodology to Meet the Program - Experience of the organisation / individual - Methodology proposed | Same |

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| | - Price criteria can be fixed price, or upper limiting fee or schedule of rates depending upon the particular procurement activity. | |
| d) | Yes | Yes |
| | Aboriginal Participation has a 5% weighting. Construction (Other): - Women in Construction included in tender regarding reporting requirements (\$10M>) - Skills, Training and Diversity – Apprenticeship target - Mandatory Criteria for \$10M> - Infrastructure Skills Legacy Program (ISLP) is mandatory criteria for \$100M> | Weightings are always applied however the weighting varies for each procurement depending on the types of goods and services. As an example, having an acceptable Aboriginal, SME and Local Participation Plan is often a mandatory criterion which demonstrates to the tenderer that it is an important criterion to government. The weighted criteria will be different depending upon the product or service being sourced. |
| | The Evaluation Criteria are listed in the tender documents in the "Conditions of Tender" - the relative importance is articulated, not the actual weightings. | Same |
| e) | A challenge in the construction procurement space is the department's "Education Facilities Standards and Guidelines (EFSG)" - this stipulates what is acceptable when constructing / upgrading a Department of Education infrastructure asset. In many instances, the "innovation" offered by tenderers is a lesser quality product that they can make a greater margin on rather than a product that not only takes into account purchase price, but maintenance requirements and longevity. Additionally, when it comes to design, more recently the department has tried to focus on consistency and standardisation to drive down delivery costs - rather than catering to architects who may desire free-reign in order to compete for design awards or accolades. The department is open to genuine innovation and this can be seen by the progression of the Manufacturing for Schools program which is an innovative way of delivering schools cheaper and faster due to offsite manufacturing. | N/A - construction question |
| f) | The Department of Education in the construction professional services space in most instances engages these services directly (Architect, Cost Manager, Project Manager, Mechanical and Electrical Engineers, Civil and Structural Engineers, | N/A - construction question |

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| | <p>Town Planning etc). When it comes to the engagement of the construction contractor (the builder) - these are engaged utilising the GC 21 contracting mechanism. The contractor is responsible for who they sub-contract the work to whether that be landscapers or concretors, electricians or plumbers.</p> <p>The contractor is responsible for all sub-contractors that are engaged as required for the completion of scope of works. Sub-contractors are sometimes (but not always) advised in the tender submissions.</p> | |
| g) | <p>In the construction procurement space, this is one of the reasons for the existence of the EFSG mentioned in response (e) above. To ensure that the construction ensures a level of quality that is sufficient to meet the needs of the school as well as be able to be maintained for a life expectancy of circa 40 years, compliance with the EFSG goes a long way to ensuring that the ongoing maintenance is at an appropriate level. Once any new build or upgrade is completed by the building contractor, the local Asset Management Unit will support the ongoing maintenance of those completed works and may engage local providers.</p> | <p>Yes - in the Goods and Services (including IT) space, this is looked at when developing the specification prior to going out to market, and during the subsequent tender evaluation to ensure that the product has sufficient quality to meet the anticipated life expectancy and that any maintenance required during that period is captured (and assessed) as whole of life cost when determining the recommended product.</p> |
| h) | <p>All tenderers are advised in writing (via email) of the outcome following the approval of the tender evaluation recommendation by the appropriate procurement and financial delegates.</p> <p>The publishing of procurement outcomes (engagements of \$150,000 or more) are done via the Contract Award Notice (CAN) process on the eTendering system as per the Government Information Public Access Act 2009 (GIPA) requirements.</p> | <p>Same</p> |
| i) | <p>In the notification to unsuccessful and successful tenderers, debriefs are offered (and recommended) to all tenderers. The following is an example of the feedback provided:</p> <ul style="list-style-type: none"> - Initial compliance check (did the tender meet the Mandatory requirements for participation) – details of the submission in terms of the information assessed for compliance to the Conditions of Tender. - Non-Price weighted criteria – strengths | <p>Same</p> |

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| | <p>and weaknesses of the submission and advice on areas of potential improvement (based upon the agreed commentary captured during the tender evaluation)</p> <ul style="list-style-type: none"> - Price – advised if competitive or non-competitive. - No specific details provided as comparison to other tenderers. | |
| j) | <p>Whilst the procurement function within the Department of Education will "run" the tender, once the contract has been established, the contract owner is responsible for the management of the contract (with guidance provided by the procurement function) to ensure the benefits identified during the tendering process are realised. In the construction space, School Infrastructure has Project Directors and Senior Project Directors whose responsibility includes not only ensuring that the project is delivered, but that the contract is managed in accordance with the GC21 framework.</p> | <p>Whilst the procurement function within the department will "run" the tender, once the contract has been established, the contract owner is responsible for the management of the contract (with guidance provided by the procurement function) to ensure the benefits identified during the tendering process are realised. In the Goods and Services space and specifically the IT category, the department's IT Directorate has a specific team whose responsibility it is to manage the large number of IT contracts to ensure the benefits identified in the sourcing activity are realised.</p> |
| k) | <p>All mandatory requirements are included in the evaluation criteria, which is detailed in the procurement strategy and tender evaluation plan. This compliance is often conducted in two stages. The first is during the initial compliance check to the mandatory criteria in the tender submission, the second is by the tender evaluation team during evaluation of the weighted criteria. Note that each tender weighted evaluation criteria is specific to that scope therefore the compliance check may only occur in a single stage for some tenders.</p> | Same |
| | <p>This assessment and outcome is included in the Tender Evaluation Report which is signed by the tender evaluation team and financial and procurement delegates. Any reporting requirements of those policies will be provided to the managing agency (mostly NSW Procurement / NSW Treasury).</p> | Same |
| l) | <p>Under NSW Government's standard GC21 contract, construction contractors are required to be third party quality assured for major construction contracts. While each contractor is responsible for delivering a defect free project, on-site Project Managers</p> | <p>The business unit who commissioned the procurement is not only responsible for managing the contract that was established, but also ensuring that the quality of the product or service meets the</p> |

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| | and Department of Education's in-house Quality Assurance Specialists conduct regular inspections of general quality and also target school specific issues related to the department's facility standards. Contractor Performance Reports are required to be completed periodically. In the construction space, School Infrastructure employs Project Directors and Senior Project Directors as well as engaging external Project Managers whose collective responsibility includes not only ensuring that the project is delivered to the quality outlined within the contract and within the agreed timeframes and cost, but the contract itself is managed in accordance with the GC21 framework. | requirements established within the contract. |
| | School Infrastructure employs Project Directors and Senior Project Directors as well as engaging external Project Managers. | The relevant contract owner or contract manager within the business unit. |
| m) | As mentioned above, Contractor Performance Reports (CPR) are required to be completed periodically, these cover whether the performance of the contractor is satisfactory, not only when it comes to delivering the project, but also identifies Work Health and Safety issues are escalated to an appropriate level within both the contractor engaged for completing the work and within the department. | In the Goods and Services space, the relevant contract owner or contract manager would raise these during performance review meetings or if IT during any functional or user acceptance testing. |
| | Post CPR discussions about performance happen all the time. Recently the delivery Directors met with Richard Crookes Constructions to discuss recent CPR's as there was a noticeable performance difference between teams on different School Infrastructure projects. We received a commitment from their senior executives to take action to determine the cause and resolve the issues we identified. | The waste contract is a whole of government contract managed by NSW Treasury. Monthly meetings are held with the supplier as well as the Department of Education's contract manager. An issues log is maintained and provided to NSW Treasury on a regular basis. NSW Treasury also undertakes an annual audit of the contract which includes key supplier representatives and all agencies. |
| n) | During the tender process the tenderer is required to confirm that they will comply with the terms of the contract which includes conformance with the NSW Procurement Policy Framework. Once the contract is active, the contract manager will ensure that the project is delivered as are the terms of the contract (GC21). | During the tender process the tenderer is required to confirm that they will comply with the terms of the contract which includes conformance with the NSW Procurement Policy Framework. Once the contract is active, the contract manager will ensure that the project is delivered as are the terms of the contract. |

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| o) | During the tender process the tenderer is required to submit a Workplace Relations Management Plan (WRMP) which is sent to the Construction Compliance Unit for assessment. | There are different teams within Education who can provide support to a contract owner i.e. WHS, legal, ITD. Depending on the project, specialist advisors may be required. |
| p) | All tender documentation, including scopes of work / specifications, drawings, photo's data files etc, any addendums issued during the tender period, meeting minutes, details of pre-tender briefings, all tender responses, any post tender clarifications and supporting information, any negotiation plans and outcomes, unsuccessful letters, contract award notice, contract. | All tender documentation, including scopes of work / specifications, drawings, photo's data files etc, any addendums issued during the tender period, meeting minutes, details of pre-tender briefings, all tender responses, any post tender clarifications and supporting information, any negotiation plans and outcomes, unsuccessful letters, contract award notice, contract. |
| | Data is retained in a number of systems: - Portt, source to contract system (construction and asset management tenders above \$500k) - Treign, project management system - IPS, the Integrated Procurement System (construction and asset management tenders below \$500k) - SAP, vendor payments and the department's ERP - TRIM, document management system | Data is retained in a number of systems: - Portt, source to contract system (construction and asset management tenders above \$500k) - SAP, vendor payments and the department's ERP - TRIM, document management system |
| | For consultants we provide a detailed tender analysis for every consultant tender. We also benchmark every tender received, including the non-successful tenders, to give a full view of the current market. For construction costs a tender analysis is carried out by the external Cost Manager. We also benchmark the costs from tender to give us the most up to date benchmarking, and then updated regularly until the project is complete. For PTE's in construction a formal peer review is carried out by Director Cost Management, Manager Cost Management or the cost manager who is part of the Expert Reference Group. This peer review analyses each of the cost elements in the PTE to ensure they are aligned with current benchmarking or current market data. | Data analysis is undertaken in all areas of procurement such as governance, sourcing and contract management. This includes pricing analysis, contract performance, analysis to support policies such as APP, ICT SME and category planning. |

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18. How many local businesses and suppliers do you currently engage?

ANSWER

The Department of Education currently engages with 19,759 suppliers.

Ninety six per cent of these suppliers are located within NSW.