

**Submission  
No 13**

**INQUIRY INTO PROCUREMENT PRACTICES OF  
GOVERNMENT AGENCIES IN NEW SOUTH WALES AND  
ITS IMPACT ON THE SOCIAL DEVELOPMENT OF THE  
PEOPLE OF NEW SOUTH WALES**

**Organisation:** Industry Capability Network

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The Hon. Dr Sarah KAINE, BEc, PhD MLC  
Chair, Standing Committee on Social Issues  
NSW Legislative Council  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Dr Kaine,

**Re: Inquiry into the procurement practices of government agencies in New South Wales and its impact on the social development of the people of New South Wales**

It is our pleasure to have the opportunity to provide a submission to the Standing Committee on Social Issues regarding procurement practices and social development of the people of NSW.

Industry Capability Network (NSW) Ltd (ICN) is an independent not for profit company established in 1984 when industry and employment groups came together with government with a support network to help buyers find competent, local suppliers. This helped to reduce the impact of assumptions that certain products and services are only found overseas. It was felt that if this market gap could be addressed, if there were an intermediary with extensive knowledge of local capability, it could be engaged as required to provide potential suppliers to buyers.

That intermediary is now called ICN and, due to the use of technology and people, ICN efficiently helps buyers to locate local capability for projects and on-going needs. ICN NSW is a stand alone entity, but collaborates with the other state-based ICNs and ICN Limited as a coordinated network with a common goal of helping local industry in order to create local jobs.

[ICN Gateway](#), is an internet-based portal used nationally today that allows suppliers to create a profile about themselves and to learn about opportunities for business growth through published project pages and related work packages.

ICN is often utilised by the contractors to government once they have been awarded a contract. This is commonplace for major transport, hospitals and infrastructure projects. ICN has also assisted with emergency projects, such as the 2020 bushfire clean up.

ICN also works on many private projects, like renewable energy, critical mineral mining projects and on-going manufacturing requirements.

Because of the breadth and depth of ICN's involvement in major procurements, ICN is uniquely positioned to understand supply chain mechanics from the major buyers through to small and medium enterprises (SMEs) who may be several tiers down in the supply chain.

As a consequence of a long and deep exposure to procurement practices in NSW, ICN has provided input to policy, practical assistance to buyers when formulating their social and local procurement

strategies and of late, have been able to provide supply chain mapping to support decision making regarding major projects and foreign investment.

In certain circles, ICN is a well known resource for highlighting potential suppliers that help buyers achieve their commitments with respect to local content, Aboriginal content, regional content and just finding things. ICN features in the Australian Jobs Act regarding Australian Industry Participation Plans, the NSW Small and Medium Enterprise and Regional Procurement Policy and various procurement guides.

ICN is pleased to contribute to this inquiry not to be self-serving, but as an obligation to provide tempered and informed input to the inquiry without bias. Please see below our detailed response to each of the items included in the Term of Reference. Our responses are in blue.

That the Standing Committee on Social Issues inquire into and report on the procurement practices of government agencies in New South Wales and its impact on the social development of the people of New South Wales, and in particular:	
(a) the current state of procurement by New South Wales government agencies, in particular:	
(i) the value of procurement, through whole of government or agency procurement arrangements	ICN is unable to comment
(ii) the policies, schemes and contracts of all categories that New South Wales government agencies procure, including labour	<p>It is one thing to have a policy, but it also needs to be implemented. The Small and Medium Enterprise and Regional Procurement Policy allows streamlined small procurements from certain types of businesses. However, the policy is therefore not used by procurement professionals within agencies, but more general staff spread across the full gambit of positions. These staff are difficult to access and it is felt that they are not as knowledgeable or incentivised as they should be. To compensate for this shortcoming, we often tell SMEs that it is their responsibility to educate the staff within an agency about the policy and encourage its use. Analysis of the amount of times the policy has been applied could be illuminating. Further analysis of the times it could have been applied but wasn't would be glaring.</p> <p>The Aboriginal Procurement Policy is an example of a policy that has been successfully designed and implemented. The thresholds are large enough to be meaningful and there has been great education about the policy within staff and Aboriginal businesses. All policies need refinement over time and the concept of black cladding is not yet addressed, and should be.</p>

	<p>Panels create efficiency within procurement. However, they also create road blocks. As a recent example, ICN had cause to investigate what opportunity existed for a well-established signage company to supply into Transport for NSW (TfNSW). A panel exists and there are just three suppliers on the approved list. The panel was established in 2019 and will continue to operate until June 2025 following an extension in 2022 (or may be extended a second time). All other potential suppliers have been locked out for six years, which does not bode well for competitive or innovative supply and does not support investment outside the three panel members. Additionally, although the three prequalified suppliers have been awarded contracts by TfNSW, construction contractors who carry out works for TfNSW utilise the same panel. The value of the work allocated to the three suppliers as a result of being on the panel is therefore considerably understated.</p>
<p>(iii) the number of whole of government procurement arrangements available to New South Wales government agencies</p>	<p>ICN is unable to comment</p>
<p>(iv) the application of the New South Wales Procurement Policy Framework and the devolved nature of the responsibilities and obligations of New South Wales government agencies under the framework</p>	<p>The devolved model seems to work well. Our observation is that it has allowed some agencies to advance considerably in the areas of procurement they can most influence and benefit from.</p> <p>For example, Transport for NSW has excelled in the realm of social procurement, having developed their own tender clauses and post-contract award engagement and monitoring processes.</p> <p>We expect the devolved model will work for as long as mandatory reporting and oversight by the Procurement Board are used to identify areas of success and failure.</p>
<p>(v) the value/volume of New South Wales government agencies procurement undertaken outside of whole of government procurement arrangements</p>	<p>ICN is unable to comment</p>
<p>(vi) the accreditation program for goods and services procurement and construction procurement</p>	<p>This program is transparent and is always open, so it is accessible to most construction companies. The feedback ICN has received is that the effort required to be placed on</p>

	<p>the panel is daunting, for unknown benefit. In regional areas, where many construction firms have “enough” stable work to keep them satisfied, they are unlikely to go to the trouble of responding to the requirements necessary to get on the panel. A simplification of the requirements for the entry tier on the panel could encourage more regional and SME construction firms to participate, thus supporting growth in regional NSW and smaller businesses, with the corresponding social benefits.</p>
<p>(b) the effectiveness of whole of government and agency procurement arrangements, including standing offers, panels and prequalification schemes, in ensuring that suppliers and their subcontractors deliver value for money and comply with relevant policies and regulations, including labour laws, at the qualification, contract negotiation stage and contract management stages of procurement</p>	<p>When agency procurement opportunities are offered through eTendering, any business can submit a tender. A common journey we find SMEs follow is that they review a tender and decide they might have a chance. They then put all of the work in to understand the requirements and experience the frustration of preparing answers to questions they were never sure of the meaning for. Finally they submit their tender and after a considerable time find out that they were unsuccessful. So, they decide after the first or second round of this process that government tenders are a waste of time.</p> <p>SMEs are disadvantaged through wasting time and money on preparing tenders for work they had no chance of securing. A solution might be to introduce an EOI step before tendering so that companies that do not meet the minimum criteria due to certifications, size, financial capability, location or experience are advised not to tender.</p> <p>There are several possible solutions to this issue, but a key one is to allow the tenderer to self (un)select. However, the details in the tender are rarely sufficient for a supplier to make this decision with confidence. For example, selection criteria and their broad weightings are often in the RFT documents. However, they can be as broad as 60% price, 40% non-price. Further description may be included elsewhere in the documents, but not the weightings of the elements described. The view held by procurement professionals is that if the detailed selection criteria are supplied, then tender submissions will be written in a way just to address the selection criteria - well, yes! More detailed explanation of the selection criteria would be beneficial in helping SMEs to decide whether they should submit a response to a tender or not. We believe the extreme openness to all tenderers leads to far too many</p>

	<p>tenders to be thoroughly evaluated and creates disappointment in SMEs that should not have made the effort to respond in the first place.</p> <p>Perhaps there is another solution possible. Imagine a trusted third party between the agency and the SME tenderers that knows exactly what the agency is seeking and how it will evaluate the tenders it receives. Furthermore, if an SME describes how it believes it would perform against the detailed selection criteria to the trusted third party, the SME can be given an assessment of how it would most likely be rated by the agency, thus helping the SME to avoid responding to the RFT when it had no chance of being awarded the work anyway.</p>
<p>(c) current capacity of procurement officials in government agencies to assess suppliers and ensure they, and their subcontractors deliver value for money and comply with relevant policies and regulation, including labour laws, at the qualification or contract stage and throughout the contract management stage</p>	<p>ICN is unable to comment</p>
<p>(d) any opportunities that may exist for co-regulation, and other incentives to improve labour market governance and enforcement through the procurement process to ensure the process delivers both value for money and social outcomes</p>	<p>Certification to AS 4801 Occupational Health and Safety Management Systems should be valued in tender responses. Being mandatory would eliminate many SMEs, but valuing it in tender assessment would provide an extra incentive for businesses to comply. This would lead to more workers being protected at work and would be a disadvantage to companies that take no care with their workers.</p>
<p>(e) the evaluation criteria used in tenders and how they are weighted in making a decision to award a contract, in particular consideration of:</p>	
<p>(i) local content</p>	<p>We understand there to be no local content preference in NSW tenders. This is in stark contrast to the Local Jobs Act in Victoria which, despite not explicitly saying so, is all about jobs for Victorians, and statements by the Queensland Premier like "We will be making buses in Queensland, by Queenslanders and for Queenslanders". As a result we have NSW manufacturers being handled at</p>

	<p>arms length by NSW procuring agencies, whilst knowing that they have very little chance of supplying into Victoria or Queensland unless they duplicate or move manufacturing to another state. Local content should be defined as Australian and New Zealand content and competition between states should be deemed unconstitutional. Otherwise, NSW businesses cannot achieve the scale required to manufacture efficiently, thus placing them also at a cost disadvantage.</p>
<p>(ii) value for money</p>	<p>It is commonly known that Value for Money is more often than not interpreted to be based on price and not much else. Price is a clear and safe measure to use, but it does not deliver value for money. Value for money should include net social benefit for NSW/Australia, for example, taking into account employment, skills development, workforce development and even taxes received that will contribute to the welfare of the state. It should also include whole of life costs, so that local servicing and quality that lasts are valued.</p>
<p>(iii) social, economic and labour market outcomes</p>	<p>ICN has witnessed the use of social, economic and labour outcome requirements in tenders. It has been our observation that including requirements is just the start, in terms of making real change. The best in class we have seen is Transport for NSW and Sydney Metro, who not only stipulate requirements in the RFT, but also request stretch targets and, importantly, ensure the commitments are relayed into the contract and contract reviews . Having done that, they provide resources to oversee that the commitments are being included right from the beginning of the planning and delivery stage. Monthly reporting on progress ensures that these requirements are taken seriously and not as just a secondary issue.</p> <p>On too many occasions, the bid team has not provided a thorough handover of requirements to the delivery team and so the achievement of the commitments has not been given priority nor resources allocated to allow the commitments to be delivered.</p> <p>Implementing practices that support social, economic and labour market outcomes takes time. Therefore, sufficient time needs to be allowed from the time a contract is awarded until delivery is required to implement the specified measures. A skills requirements and skills</p>

	<p>development program for all of the various stages of the delivery is one part of what could be created. Another program for developing capacity and capability of sub-suppliers is another.</p>
<p>(iv) environmental considerations, such as sustainable sourcing, energy efficiency and waste reduction</p>	
<p>(v) innovation</p>	<p>Our impression is that in most cases, procurement professionals believe that allowing alternate proposals to be made in a tender is sufficient opportunity for innovation. Such tenders require the standard requirement to be satisfied before an alternate is provided, but, as an example, how can a manufacturer of prefabricated libraries comply with an RFT for a traditionally constructed library and then offer its alternate bid?</p> <p>The Buyer Guidelines published here: <a href="http://Plan   info.buy.nsw">Plan   info.buy.nsw</a> has a summary at the top of the page. The first dot point is that you should engage with industry. The last dot point is that you should not engage with industry until you have authority to procure. As authority to procure is likely to depend on the procurement being included in the budget, the timeline available for engaging with industry is too short for real innovation.</p> <p>In our opinion, innovative solutions should be sought pre-tender so that any seemingly viable alternatives can be permitted by the RFT.</p>
<p>(vi) subcontracting arrangements</p>	<p>Subcontracting arrangements tend to include Aboriginal participation and some requirement for learning workers. The missing link is a tool for reporting from the beginning of the supply chain to the end about the achievements. As an example of how this might be addressed, the Victorian government uses a tool called VMC - "An automated end-to-end information management system that collects complete and insightful local, social and sustainable procurement data to support Government and Industry measure local, social and sustainable impact delivered through Victorian Government procurement activities."</p>
<p>(f) current approaches to transparency and accountability of procurement by New</p>	



South Wales government agencies, in particular:	
(i) function and requirements of the New South Wales Government Procurement Board and the New South Wales Procurement Policy Framework	ICN is unable to comment
(ii) record keeping arrangements for procurement activities	ICN is unable to comment
(iii) Agency annual self-reports and outcome reports	Reporting needs to be made public for greater scrutiny.  Contracts awarded should be linked back to the tender on the eTendering portal.
(g) the New South Wales Government's procurement practices, in particular its ability to:	
(i) prioritise local content, local manufacturing, and local jobs	At present there are no preferences given to local supply in NSW. Such a policy does not deliver value for money for the community of NSW.
(ii) improve opportunities for quality training and workforce participation	There have been some great examples of ways in which government procurement has been utilised as the catalyst to create training and employment outcomes. One such example is the Regional Fleet Project in Dubbo. Through the utilisation of a Jobs, Skills and Industry Participation program and the application of consistent effort, local stakeholders have worked together with Transport to bring about good outcomes.  Improving opportunities requires time and a buffer is needed between when a project is awarded to a contractor and when commencement and completion is required in order to allow for sourcing of candidates, training them and getting them qualified.
(iii) provide opportunities for diversity, inclusion and the participation of disadvantaged groups, including women and minorities	Transport for NSW has excelled in this area.  The comment to make is that satisfying targets is only the first step. For example, in construction there is evidence that certain Aboriginal companies are being utilised as suppliers because they are large and their service is required on most construction projects. Crannage and

	<p>traffic control are two examples. In itself, repeatedly using the same Aboriginal companies is not helping to address disadvantage. Further detail regarding training and employment programs or support of relevant charities is also required.</p>
<p>(iv) support local suppliers, and small and medium enterprises</p>	<p>Supporting local suppliers is often inhibited by a reference to the Enforceable Procurement Provisions (EPPs). The EPPs are cited to avoid the work in evaluating local companies and especially SMEs.</p> <p>ICN plays a role in advising companies of government procurement opportunities when they have probably not already been advised through eTendering. However, this could be formalised, so that certain types of tenders are fed to relevant companies through ICN Gateway.</p> <p>Business Connect provides businesses with support in evaluating their readiness to tender to government and to improve their business capability. More one on one tendering support, where a business is assisted with their first one or two tenders, would be extremely valuable. There is nothing that brings clarity better than working on a real tender, with the Business Connect Advisor providing quality input.</p>
<p>(h) procurement best practice to encourage ethical conduct and promote social development in other jurisdictions, both nationally and internationally</p>	<p>The Modern Slavery Act exists, and yet we still procure from countries that exploits employees with much lower wages than Australia and without the environmental and worker safety nets that are in existence through regulation in Australia. There should be an equalising factor applied to imported procurements to create a like for like comparison in tender evaluation.</p>
<p>(i) any other related matters</p>	