

Submission
No 42

**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: Business NSW.

Date Received: 1 March 2024



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Standing Committee on Social Issues
Legislative Council
6 Macquarie Street, Sydney
NSW 2000

Dear Ms Kaine and the Committee

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

Business NSW is the state's peak business organisation, with almost 50,000 member businesses across NSW. We work with businesses spanning all industry sectors including small, medium, and large enterprises. Operating throughout a network in metropolitan and regional NSW, Business NSW represents the needs of business at a local, state, and federal level. We welcome the opportunity to provide a submission into this inquiry.

Business NSW sees small and medium-sized enterprises (SMEs) as the heart of our state's economy. A thriving SME sector enables economic growth, greater productivity, reduces monopolisation, community engagement, greater workforce participation and economic resilience, strengthening our social fabric too. Our advocacy has to date been focused on the levers that government can pull or remove to enable greater participation of SMEs in all parts of our economy.

The NSW Government spends more than \$34 billion annually on goods, services, and construction. This pipeline can often make or break businesses and has far reaching impacts on the productivity of the state and the size of our gross state product. The ability of businesses to access government contracts is critical, as they provide certainty of work and support growth and investment. Without the NSW government actively identifying local small-medium-enterprises (SME) suppliers and making it easier for them to engage with government procurement, we put at risk the ability of local firms to provide critical services and local jobs.

The most recently published NSW Government procurement data showed that almost \$8 billion was spent on NSW SMEs over the 2020-21 financial year. Over 49,000 SMEs engaged with the NSW Government through one of their toughest years on record. That was critical for SMEs, including those operating in regional NSW, and the communities they serve. These contracts often make or break small businesses. The State Government should be proud of their support of SMEs, as they are enriching and empowering local communities across NSW.

Ahead of the 2023 state election, Business NSW set the challenge to the prospective government to grow the value of government procurement to SMEs to over \$10 billion per annum.¹ The government has since indicated that SME procurement has surpassed the \$9

¹ Business NSW; *We Mean Business* (2023);
https://www.businessnsw.com/content/dam/nswbc/businessnsw/2023election/WMB_PolicyPlatform_FINAL.pdf

billion mark. However, these goals need to not simply just match inflation, bracket creeping to success, we need to ensure that there is an uplift in real terms in the value of work procured from NSW's SMEs.

This lever is critical when you consider that many small businesses often begin out of necessity². Numerous studies over the years have documented an over representation of migrants in small business activities. With many migrants, especially refugees unable to get traditional work due to structural and cultural barriers, empowering and enhancing SME participation through local procurement will have a profound impact on the success of these businesses. Furthermore, these SMEs are often in the heart of their communities, employing locally, enabling local job containment for local councils and helping to reduce cyclical disadvantage.

Since the state election, a number of improvements to procurement policies have been announced by the NSW government. At the pre-contract stage, requirements to demonstrate insurance coverage have been deferred until after a preferred bidder is selected, rather than on entry to the process, meaning that only the winning bidder has to secure coverage and not obligating businesses to acquire insurance for a prospective procurement that they would not ultimately need. The level at which departments and agencies can purchase directly from small and medium sized enterprises (SMEs) was raised from \$150,000 to \$200,000.³ At the contract management stage, the acceleration of payments has allowed small businesses to more effectively engage with Government contracts. Cash flow is king for these small businesses and the reduction of payment times will help more businesses better engage with the procurement processes. This is especially the case when often small businesses do not have access to the same financial instruments that larger businesses do to manage cash flow.

The aforementioned initiatives are welcome and have been consistently called for in the past by Business NSW. However, there is more that can be done to continue to increase procuring departments and agencies' confidence and capabilities in dealing with SMEs. There is a hesitance to deal with them for a number of reasons including financial viability and expertise. We have often seen a government announce their intent to engage more SMEs on key contracts, only to see these efforts hampered by legalese, risk frameworks and tolerances that drive many contracts away from SMEs and delivers them to head contractors or multinational businesses. Internal Government initiatives need to be undertaken to provide departments with the capability and expertise to engage SMEs without breaching their risk tolerances.

Furthermore, when assessing the total value of engagement with SMEs, both direct and indirect benefits to the economy need to be factored into these decisions, which could potentially shift the risk profiles towards engaging smaller businesses or internalising capabilities to manage smaller contractors through these processes.

We welcome this inquiry and hope it can provide additional backing for improvements to procurement processes that can deliver positive outcomes for the state and its business community, building capacity where it does not already exist. Additionally, the empowerment

² Immigrant Business: Choice or Necessity?; Labour and Management in Development Journal

³ NSW Government; "Major changes to small business procurement" (2023); <https://www.nsw.gov.au/media-releases/major-changes-to-small-business-procurement>

of small businesses to successfully procure from the public sector will likely result in them being able to successfully win private sector work too, multiplying the benefits.

Business NSW also recognises the recent establishment of the Business Bureau within Service NSW. Business NSW has been in dialogue with the government to work on improving its usefulness for the business community. The bureau can play a critical role in building capacity in the SME sector to bid for more work across both the private and public sectors, while also ensuring that they can service these contracts if successful.

Amongst the other outcomes of this Inquiry, Business NSW would support the Committee's efforts to get accurate and up-to-date procurement data published by Government, and to recommend annual publication of government-wide SME procurement. More needs to be done to ensure procurement data is published regularly, in a consistent and accurate format. At the moment data is often published at the request of a Minister, requiring continual work for transparency.

With respect to the effectiveness of whole of Government and agency procurement arrangements, we have heard of mixed results from our members on the success of these avenues. Many successfully apply to be on a panel, but often find the same suppliers are used time and time again, effectively locking them out of the procurement process for years on end. More can be done to encourage the diversification of businesses engaged on key government contracts. However, we do understand and appreciate the time required for Government agencies to begin agreements with new businesses on an annual or biannual basis. More work needs to be done to understand the experience of small businesses through this process.

Procurement processes have historically struggled to enable SMEs to compete on a level playing field against larger and multinational businesses. Formalities such as registering for pre-approval and pre-procurement panels, the ability to provide multiple, regularly updated references, even simply being aware a procurement is taking place – all of these tend to favour participants with more resources and more ability to devote staff time to selecting and pursuing procurement opportunities. Measures to ensure accountable public spending and minimise waste are appropriate – but they must be proportionate. Adding extra layers of scrutiny, including against some of the criteria identified in the Committee's Terms of Reference such as the ability to

- (i) prioritise local content, local manufacturing, and local jobs*
- (ii) improve opportunities for quality training and workforce participation*
- (iii) provide opportunities for diversity, inclusion and the participation of disadvantaged groups, including women and minorities*
- (iv) support local suppliers, and small and medium enterprises*

risks raising the barriers to entry for SMEs, and ultimately may serve to shrink rather than grow the pool of procurement participation. Similarly the evaluation criteria described in the terms of reference including:

in particular consideration of:

- (i) local content*
- (ii) value for money*
- (iii) social, economic and labour market outcomes*
- (iv) environmental considerations, such as sustainable sourcing, energy efficiency and waste reduction*

- (v) *innovation*
- (vi) *subcontracting arrangements*

could, if not managed in a way that is proportionate to the scale of work being commissioned and with a focus on clearly defined, widely available metrics, result in an undesirable move back towards complexity and undo good recent work to streamline procurement process. Expecting SMEs to devote large amounts of time and energy on reporting against these types of requirements, to enter into procurement processes that they do not know whether they are likely to be successful, is unrealistic.

Also, ensuring that the contracts make up the right mix of local content is valuable to the success of our state. Many tenders make up their portion of local content through the provision of cleaning, legal and professional services while continuing to source products from international non-local markets. The nature of the local content needs to be spread out where possible throughout the entirety of the contract.

Other barriers to entry for smaller businesses should also be addressed including, but not limited to:

Insurance

Business NSW welcomes the NSW Government's recently announced changes to procurement for contracts under \$250,000 and their intention to reform the Emergency Services Levy. But more needs to be done. Even though they can now source insurance after winning a tender, the amount of insurance being demanded is often disproportionate to the work required in the procurement. For example, a Business NSW member bidding for a \$75,000 marketing contract was told that they needed to have the same insurance coverage as labour contractors bidding for large civil work packages. Government procurement and regulatory requirements are driving businesses towards large, and often excessive amounts of coverage. It is a common stipulation of procurement processes that the applicant business have large (\$10 million or \$20 million) levels of coverage, regardless of the nature of the project being procured. The NSW Government should take greater steps to ensure that procurement eligibility requirements are tailored to the nature of the work being performed, and that high insurance requirements are not used when they are not needed.⁴

Procurement platforms

Members have told us of their experience navigating multiple portals; public, private, and not for profit. If you consider the experience of a small company who want to provide services, they could need to be registered on multiple subscription services, paying as much as \$800 a year to have visibility of the tenders that are appropriate. They then may need to setup an account for each unique opportunity at each location, for e.g., bidding for a contract at an independent school versus a public one.

eTendering has been a useful platform for the centralisation of tenders across the NSW Government and into local government, creating a platform where local councils, schools and other small businesses are incentivised to add their contracts to this portal. This allows SMEs

⁴ For further detail see Business NSW; *Insurance at the Speed of Business* (2023); <https://www.businessnsw.com/content/dam/nswbc/businessnsw/pdf/Insurance%20at%20the%20Speed%20of%20Business.pdf>

to source and be sourced from this platform, creating a simpler and more transparent process for business to comply with.

For larger and construction-focused platforms, the Industry Capability Network (ICN) NSW service offers a valuable matching service helping commissioning departments and agencies identify prospective bidders, and contractors identify potential work opportunities. ICN has recently expanded its role, in a limited capacity, into manufactured goods supply chain matching.⁵ Business NSW encourages all NSW Government departments to make use of the ICN service. We also encourage government to adequately resource ICN in order to fulfil both its longstanding role in infrastructure and construction procurement, and the current Government's election commitment to expand ICN's manufacturing-related supply chain matching activities.

Business NSW appreciates the opportunity to provide feedback to this inquiry and would welcome the opportunity to discuss any of these findings in more detail when appropriate. If you have any questions about this submission or would like to discuss it further, please contact Mustafa Agha, Executive Manager, Policy at

Yours Sincerely,

David Harding

Executive Director
Business NSW

⁵ Business NSW is a co-founder and co-director of the Industry Capability Network (ICN) NSW. Business NSW views ICN as playing a central role in procurements of infrastructure, the built environment, and manufactured goods. Business NSW encourages the Committee to understand the role played by ICN in matching buyers and sellers in the markets in which it operates. We also encourage the committee to ensure ICN is sufficiently resourced to carry out its role in ensuring that procurements reach NSW businesses where possible. Government departments involved in procurements should understand the role and capabilities of ICN and make use of its services in preference to establishing bespoke or segregated procurement platforms and systems. ICN has also submitted to this enquiry – Business NSW commends that submission to the Committee.